

## NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 2-91)

AGENCY

AGENCY FILE NUMBER (if any)

State Department of Social Services

RDB# 1091-49

OAL FILE NUMBERS	NOTICE FILE NUMBER 91-1224-09	REGULATORY ACTION NUMBER 92-1125-058	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
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For use by Office of Administrative Law (OAL) only

1992 NOV 25 AM 11:00  
OFFICE OF  
ADMINISTRATIVE LAW  
ENDORSED  
APPROVED FOR FILING  
JAN 04 1993  
Office of Administrative Law

NOTICE

REGULATIONS

**FILED**In the office of the Secretary of State  
of the State of California

JAN 04 1993

At 3:25 O'clock P.M.

MARION FONG FU, Secretary of State

By John Lewis  
Deputy Secretary of State

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE WRL and Homeless	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 92-1125	PUBLICATION DATE 1-3-93	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S)	ADOPT
SECTIONS AFFECTED MPP	AMEND 40-125.51 REPEAL

## 2. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code, § 11346) ☐ Resubmittal ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) ☐ Emergency (Gov. Code, § 11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only ☐ Other (specify) \_\_\_\_\_

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

September 1, 1992 to September 16, 1992

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☒ Effective 30th day after filing with Secretary of State ☐ Effective on filing with Secretary of State ☒ Effective other (Specify) 2-1-93

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify) \_\_\_\_\_

## 6. CONTACT PERSON

Jim Rhoads, Assistant Chief (RDB)

TELEPHONE NUMBER

657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

TYPED NAME AND TITLE OF SIGNATORY

ELOISE ANDERSON, Director

DATE NOV 23 1992

Amend Section 40-125.51 to read:

40-125 REAPPLICATIONS AND RESTORATIONS AND COUNTY OF RESPONSIBILITY  
(Continued)

40-125

.5 (Continued)

- .51 For cases in which an application has been signed in the first county/ and the applicant requests homeless assistance (see Section 44-211.5) in a second county prior to eligibility being established and/or authorization of aid in the first county. For cases in which an application has been signed in the first county, and the applicant requests homeless assistance (see Section 44-211.5) in a second county prior to eligibility being established and/or authorization of aid in the first county, the application process shall be reinitiated in the second county. The second county is responsible for issuing the payment for homeless assistance from the date of the request. The first county shall take denial action of the application signed in the first county the procedure outlined in Section 40-125.5 shall apply. The beginning date of aid shall be the date of application in the first county.

Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: 45 CFR 233.60, Section 3510 (October, 1961), Federal Handbook of Public Assistance Administration; Section 113491, Government Code; and Sections 10553, 10554, 10604, and 11023.5 and 11056, Welfare and Institutions Code.



## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

## AGENCY

State Department of Social Services

AGENCY FILE NUMBER (if any)

RDB #0792-23

OAL FILE  
NUMBERSNOTICE FILE NUMBER  
Z92-0723-01

REGULATORY ACTION NUMBER

92-1125-04C

EMERGENCY NUMBER

92-0722-02E

PREVIOUS REGULATORY ACTION NUMBER

For use by Office of Administrative Law (OAL) only

ENDORSED  
APPROVED FOR FILING

JAN 08 1993

Office of Administrative Law

NOTICE

REGULATIONS

FILED

In the office of the Secretary of State  
of the State of California

JAN 08 1993

At 3:35 O'clock P.M.

MARCH FONG EU, Secretary of State

By Beth Louvige  
Deputy Secretary of State

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE <u>Windley v. McMahon Retroactive Regs.</u>		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER <u>92-1125-04C</u>	PUBLICATION DATE <u>8-7-92</u>

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)	
TITLE(S) <u>MPR</u>	ADOPT <u>50-022</u>
SECTIONS AFFECTED	AMEND
	REPEAL

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346)
 ☐ Resubmittal
 ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 ☐ Emergency (Gov. Code, § 11346.1(b))

☒ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only
 ☐ Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

November 5, 1992 through November 20, 1992

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State
 ☒ Effective on filing with Secretary of State
 ☐ Effective other (Specify)

5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☒ Department of Finance (Form STD. 399)
 ☐ Fair Political Practices Commission
 ☐ State Fire Marshal

☐ Other (Specify)

6. CONTACT PERSON

Jim Rhoads, Assistant Bureau Chief, Regulations Development Bureau

TELEPHONE NUMBER

657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

DATE

NOV 25 1992

TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

Amend Section 50-022 to read:

50-022 WINDLEY v. McMAHON RETROACTIVE COURT ORDER

50-022

HANDBOOK BEGINS HERE

.1 Background

On October 12, 1989, the Windley v. McMahon lawsuit was filed with the Sacramento County Superior Court challenging the State Department of Social Services' (SDSS) policy of not requiring county welfare department Greater Avenues for Independence (GAIN) Program offices (counties) to provide adequate and timely notice to GAIN registrants and participants of supportive services actions being taken by counties and of their right to a state hearing. SDSS agreed it is SDSS' responsibility to monitor and instruct counties to provide adequate and timely written Notices of Action (NOAs) to GAIN registrants and participants. SDSS also agreed counties must inform registrants and participants of their right to a state hearing. On April 6, 1992, the Stipulation of Settlement and Consent Decree was signed in Sacramento County Superior Court. SDSS and counties must provide written notice of all actions related to GAIN supportive services in accordance with the provisions stipulated in the Windley Consent Decree.

HANDBOOK ENDS HERE

.2 Definitions

For the purpose of these regulations:

- (a) "ABCDM 228" means the Applicant's Authorization for Release of Information Form ABCDM 228 (10/78) which is used to obtain documentation when the requester does not have the necessary information or is unable to provide such information.
- (b) "Class member" means any current or former GAIN Program participant who:
  - (1) Had their supportive services approved, denied, changed or terminated;
  - and
  - (2) Did not receive an adequate written notice telling them why;
  - and/or
  - (3) Was not told of their right to a state hearing if they did not agree with the county's action.
- (c) "Five standard languages" means Spanish, Vietnamese, Laotian, Chinese and Cambodian.



- (d) "GAIN 50" means the GAIN Hearing Rights Form GAIN 50 (6/92) which is used to explain to people their rights to a hearing if they do not agree with the action taken by a county.
- (e) "GEN 1172" means the Statistical Report Form GEN 1172 (3/91) Court Case: Windley v. McMahon used to gather data regarding the request to review case records resulting from this lawsuit.
- (f) "NOA" means a notice of action (NOA) that meets the adequacy requirements of Section 22-022. A requester is considered to be informed of the outcome of a request to have his/her case file reviewed when he/she is provided a NOA.
- (g) "Receiving county" means the county which the TEMP GAIN 77 is mailed to or given to for processing. The receiving county may or may not be the responsible county.
- (h) "Responsible county" means the county that denied, reduced or terminated supportive services and did not provide adequate written notice explaining the reason for such an action.
- (i) "Retroactive period" means the period of time between October 12, 1986 to April 1, 1991 for all counties except Los Angeles County. The retroactive period for Los Angeles County shall be from October 12, 1986 through November 30, 1992.
- (j) "Request period" means the time period in which a person may file a request to have their case file reviewed which is from August 1, 1992 through October 30, 1992 in all counties except Los Angeles County. The request period for Los Angeles County will be from August 1, 1992 through January 31, 1993.
- (k) "TEMP GAIN 58" means the GAIN Supportive Services Overpayment Notice Form TEMP GAIN 58 (~~7/92~~) which is used to explain to a person his/her responsibilities for payment of overpayments.
- (l) "TEMP GAIN 63" means the Windley v. McMahon Notice [Informing Card] TEMP GAIN 63 (7/92) mailed with the Medi-Cal card to current Aid to Families with Dependent Children (AFDC) and medically-needy-only (MNO) recipients.
- (m) "TEMP GAIN 76" means the Windley v. McMahon [Informing Poster] TEMP GAIN 76 (8/92) used to notify former and current GAIN Program participants of the Windley settlement.
- (n) "TEMP GAIN 77" means the Windley v. McMahon Review Request Form TEMP GAIN 77 (7/92) provided by counties to potentially eligible persons to use to request to have their case files reviewed.

### .3 Informing of Case Review

#### HANDBOOK BEGINS HERE

TEMP GAIN 63 shall be mailed to all current AFDC and MNO Medi-Cal recipients. TEMP GAIN 76 shall be provided to all colleges, universities, community colleges, child care resource/referral agencies, and legal aid and welfare rights organizations. TEMP GAIN 76 shall be placed in all county welfare offices, GAIN offices and Food Stamp outlets. The TEMP GAIN 77 shall be provided by counties to any person upon request.

#### HANDBOOK ENDS HERE

### .31 SDSS Responsibilities

SDSS shall:

- .311 Include TEMP GAIN 63 with the Medi-Cal card issued to current AFDC and MNO recipients the month of August 1992.
  - (a) The TEMP GAIN 63 shall be printed in English on one side with bullets in the five standard languages on the other.
- .312 Provide counties with a reproducible copy of TEMP GAIN 77 in English and Spanish with bullets in Vietnamese, Laotian, Chinese and Cambodian.
- .313 Provide counties with a supply of the TEMP GAIN 76 in English and Spanish with bullets in Vietnamese, Laotian, Chinese and Cambodian.
  - (a) Instructions shall request counties to display the TEMP GAIN 76 from August 1, 1992 through October 30, 1992.
- .314 Provide counties with reproducible copies of NOA messages in English and the five standard languages.
- .315 Mail copies of the TEMP GAIN 76 to legal aid and welfare rights organizations of the plaintiffs' choice.
- .316 Make available \$30,000 for a summary of the court settlement to be published in newspapers or other media of plaintiffs' choice.
  - (a) Announcements and/or news releases shall be provided to the media two weeks before the beginning of the request period and two weeks before end of the period.

### .32 County Responsibilities

Counties shall:

- .321 Give or mail a TEMP GAIN 77 to anyone upon request.

- (a) A TEMP GAIN 77 shall be mailed within seven (7) working days after receipt of verbal or written request.
  - (b) If the request is received the last week of the request period, the county shall advise the requester of the final filing date.
- .322 Place TEMP GAIN 76 in conspicuous locations in all welfare offices, GAIN offices and Food Stamp outlets.
- .323 Issue TEMP GAIN 76 to:
- (a) All child care resources and referral agencies requesting that the TEMP GAIN 76 be displayed in conspicuous locations.
  - (b) All community colleges, state colleges and universities, requesting that the TEMP GAIN 76 be displayed in conspicuous locations.

HANDBOOK BEGINS HERE

- (1) It is recognized and agreed that SDSS and counties cannot require educational institutions to display the TEMP GAIN 76.

HANDBOOK ENDS HERE

- .324 Reproduce an adequate supply of the TEMP GAIN 77 in English and Spanish.

.4 Review Request Form

HANDBOOK BEGINS HERE

Potentially eligible persons shall receive a TEMP GAIN 63 in the mail or see a TEMP GAIN 76. A potentially eligible person may request a TEMP GAIN 77 by mail or in person from any county.

HANDBOOK ENDS HERE

.41 Requester Responsibilities

Requester shall:

- .411 Complete and sign TEMP GAIN 77 [see Section 50-022.521]. The TEMP GAIN 77 shall be signed under penalty of perjury.
- .412 Submit TEMP GAIN 77 to responsible county.
  - (a) Submit TEMP GAIN 77 on or before end of request period. If mailed, postmark must be no later than October 30, 1992



for all counties except Los Angeles County. For Los Angeles County the postmark must be no later than January 31, 1993.

(b) Requester shall be permitted to resubmit a previously denied request during the request period.

.413 Provide to counties additional information, documentation or clarification of the TEMP GAIN 77 upon request.

HANDBOOK BEGINS HERE

(a) Examples of types of information or clarification that may be requested or reasons for a request: person's name if different while in GAIN; illegible handwriting; wrong social security number; missing social security number; no county listed.

HANDBOOK ENDS HERE

.42 County Responsibilities

Counties shall:

.421 Stamp the TEMP GAIN 77 with the date it is received.

.422 Retain envelopes that are postmarked after October 30, 1992 for all counties except Los Angeles County. Los Angeles County shall retain all envelopes that are postmarked after January 31, 1993 [see Section 50-022.412].

(a) If the date cannot be determined by either postmark or date stamp, use the date the requester signed the TEMP GAIN 77 ~~shall be used to determine when the request was received.~~

.423 Issue a NOA (M50-022N Rev. 7/92) within 30 days denying request if request is postmarked after request period [see Section 50-022.534].

.424 Maintain all records which contain documentation relative to this court order for three years after the final legal claim has been submitted for federal reimbursement.

(a) Records include, but are not limited to, those used to determine eligibility for the class, including denials, and those used to determine the amount of any corrective over/underpayments.

(b) Records which are pertinent to this court order may include case records, payment records, assistance claims and reimbursement claims.

.425 Determine the responsible county.

- (a) Process the TEMP GAIN 77 within 60 days when the receiving county is the responsible county and the requester is a class member [see Section 50-022.54].
- (b) Process the TEMP GAIN 77 within 30 days when the receiving county is the responsible county and the requester is not a class member [see Section 50-022.53].
- (c) If the receiving county determines that the TEMP GAIN 77 has been submitted to the wrong county (county named on TEMP GAIN 77 is not the county which received the request), the receiving county shall issue a NOA (M50-022N Rev. 7/92) denying the request and forward the TEMP GAIN 77 to the responsible county.
  - (1) Preprint on the back of the NOA (M50-022N Rev. 7/92), or attach copy of, the GAIN 50.
  - (2) Forward the TEMP GAIN 77 to the responsible county within 15 calendar days after receipt.
  - (3) Issue a NOA (M50-022N Rev. 7/92) within 30 days. Inform the requester in the NOA that the TEMP GAIN 77 has been forwarded to the responsible county for processing.
  - (4) The date the TEMP GAIN 77 was submitted to the receiving county shall be the date of the request.
- (d) If the receiving county cannot determine which is the responsible county (no record of the requester having been in the GAIN Program and there is no other county listed on the TEMP GAIN 77), issue a NOA (M50-022N Rev. 7/92) denying the request telling the requester to resubmit the TEMP GAIN 77 to the responsible county.
  - (1) Preprint on the back of the NOA (M50-022N Rev. 7/92), or attach copy of, the GAIN 50.
  - (2) The receiving county shall issue the denial NOA (M50-022N Rev. 7/92) within 30 working days after receipt of request [see Section 50-022.536].
  - (3) Receiving county shall inform requester to resubmit the TEMP 77 within the request period or 30 calendar days from the date on the NOA, whichever is longer.

.5 Request Processing

The responsible county shall determine whether the requester is a class member and take appropriate action.

Counties shall:

- .51 Complete processing the TEMP GAIN 77, to the extent possible, without requiring the requester to come in person to the county.
- .52 Review each TEMP GAIN 77 to determine if the requester has provided the information needed in order to locate the appropriate case record [see Section 50-022.425].
  - .521 For the purpose of this determination, the TEMP GAIN 77 shall be considered complete when all of the following questions are completed:
    - (a) Qualifying class member questions.
    - (b) County of residence during retroactive period.
    - (c) Requester's case name during retroactive period.
    - (d) Requester's social security number.
    - (e) Requester's date of birth.
    - (f) Requester's signature.
  - .522 The following information shall be provided in the TEMP GAIN 77 to the extent possible:
    - (a) The approximate date(s) requester participated in the GAIN Program and the action(s) that was taken by the county(ies).
    - (b) Requester's telephone number.
    - (c) Requester's current address.
- .53 Requester is not a class member.

Issue a NOA (M50-022N Rev. 7/92) within 30 days of the receipt of the TEMP GAIN 77 stating the reason for the action [see Section 50-022.425(b)]. Attach or preprint a GAIN 50 which explains the individuals right to a hearing.

The reasons for denial include, but are not limited to, the following:

- .531 Requester was not in the GAIN Program during the retroactive period; or
- .532 Requester received an adequate written notice and was told of his/her right to a hearing if he/she did not agree with the county's action.



(a) Counties shall attach a copy of the original NOA to the denial NOA (M50-022N Rev. 7/92).

.533 Requester did not receive supportive services during the retroactive period; or

.534 Requester did not submit TEMP GAIN 77 within request period [see Section 50-022.412(a)]

.535 Requester did not return NOA (M50-022M Rev. 7/92) within 30 days as requested.

.536 Requester did not submit TEMP GAIN 77 to the responsible county and the receiving county could not determine from the TEMP GAIN 77 which county was responsible [see Section 50-022.425(d)(1)].

.54 Requester is a class member.

.541 Action taken was correct.

Within 60 days, issue appropriate NOA (M50-022B, C, D, E, F, G, H, J, K, L, or O Rev.'s 7/92) specifying the action, reason for the action and the formula used to arrive at the decision.

(a) Preprint on the back of each NOA, or attach a copy of, the GAIN 50.

#### HANDBOOK BEGINS HERE

(b) NOAs ending with the number "1" are for the retroactive period of October 12, 1986 through September 30, 1990.

(c) NOAs ending with the number "2" are for the retroactive period of October 1, 1990 through April 1, 1991 for all counties except Los Angeles County. Los Angeles County will use these NOAs for its retroactive period of October 12, 1986 through November 30, 1992.

#### HANDBOOK ENDS HERE

.542 Requester was underpaid.

Within 60 days, issue a NOA (M50-022A Rev. 7/92) explaining the action, the formula used to arrive at the corrective payment and when payment can be expected [see Section 42-751.11].

(a) Preprint on the back of NOA (M50-022A Rev. 7/92), or attach a copy of, the GAIN 50.

(b) If the county has the capability to include the warrant with the NOA, the county shall do so.

- (1) For the AFDC Program, a corrective underpayment is not to be considered as income or a resource for AFDC grant calculation in the month received and the following month [see Section 44-340.6].
- (2) For the Food Stamp Program, a corrective underpayment shall be ~~counted as a resource but excluded as income in the month received~~ see Sections 63-501.111 and 63-502.2(j) excluded as income for all food stamp households and excluded as a resource for categorically eligible food stamp households as long as they remain eligible for AFDC [Sections 63-501.3(o) and 63-502.2(j)].
- (3) Interest shall not be paid on the corrective underpayment.
- (c) The county shall ensure that corrective underpayments for this court order are not considered a part of the AFDC grant calculations even when reported on the monthly reporting document.

.543 Requester was overpaid.

Within 60 days, issue a NOA (M50-022AA Rev. 8/92) with TEMP GAIN 58 explaining the action, the formula used to arrive at the overpayment and county collection procedures [see Section 42-751.2].

- (a) Preprint on the back of NOA (M50-022AA Rev. 8/92), or attach a copy of, the GAIN 50.
- (b) County shall offset any corrective underpayment against any outstanding recoupable overpayments in accordance with Section 42-751.4.
- (c) For requesters no longer receiving AFDC benefits, counties shall offset the retroactive underpayment for supportive services against any outstanding overpayment in accordance with Section 42-751.5.

.55 Request additional information (NOA M50-022M Rev. 7/92).

.551 Conduct a thorough review of the requester's case file to search for the absence of an adequate written notice or to find evidence of the action referred to by the requester.

- (a) The county shall work with the requester to clarify the action taken by the county.

.552 Attempt to resolve issue(s) by telephone first if the TEMP GAIN 77 is inconsistent with the case record or needs clarification (e.g., name of school or vocational training site, child care provider).

.553 Within 30 days, issue a NOA (M50-022M Rev. 7/92) requesting the documentation, additional information or clarification needed to complete processing request if unable to resolve issue(s) by telephone.

- (a) Preprint on the back of the NOA (M50-022M Rev. 7/92), or attach a copy of, the GAIN 50.
- (b) Requester shall have 30 days from the date of NOA (M50-022M Rev. 7/92) to respond to the request for clarification, additional information or verification.
- (c) If response is not received within the 30 days, request for review of case file shall be denied.

.554 Ask the requester to supply documentation when necessary in support of the TEMP GAIN 77 if such documentation is in the requester's possession.

- (a) If requester does not have the documentation, ask the requester to sign an ABCDM 228, or the county's equivalent form, to allow the county to obtain documentation on behalf of the requester, or
- (b) Inform the requester that if he/she is unable to provide the needed documentation, a declaration signed under penalty of perjury affirming the information shall be accepted in lieu of the documentation, unless there is conflicting evidence in the case record or conflicting information known to the county.

.555 Complete processing TEMP GAIN 77 within 30 days after receiving the additional information, verification, clarification or declaration signed under penalty of perjury from potentially eligible person.

.56 If a TEMP GAIN 77 for a specific action is filed under this court order and a claim for the same action is filed again under a subsequent court order or settlement, only the first request will be processed for the action and any subsequent claims shall be denied.

## .6 Statistical Reporting

.61 Counties shall submit the GEN 1172 no later than April 1, 1993 to the Statistical Services Bureau.

.62 Report shall include the number of:

.621 TEMP GAIN 77s counties mailed or handed to potentially eligible persons.

.622 TEMP GAIN 77s received by counties to request to have case files reviewed.



.623 TEMP GAIN 77s approved as class members.

.624 TEMP GAIN 77s denied because:

- (a) TEMP GAIN 77 was submitted after the request period.
- (b) TEMP GAIN 77 was incomplete and county was unable to get the information needed from requester to complete review of case file.
- (c) Requester was not a member of the class.
- (d) County receiving the TEMP GAIN 77 was not the responsible county. Receiving county forwarded TEMP GAIN 77 to the responsible county.
- (e) County receiving the TEMP GAIN 77 was not the responsible county. Receiving county could not determine the responsible county.
- (f) Other denials.

.625 Total corrective overpayments identified.

- (a) Total corrective overpayment amount.

.626 Total corrective underpayments paid.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 11328.2, Welfare and Institutions Code; 45 CFR 205.10; and Windley v. McMahon, Sacramento County Superior Court, Case No. 362761.

## NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

AGENCY

State Department of Social Services

0692-20

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

PREVIOUS REGULATORY ACTION NUMBER

92-1125-02C

92-0724-02C

For use by Office of Administrative Law (OAL) only

**FILED**In the office of the Secretary of State  
of the State of California

JAN 11 1993

At 3:23 O'clock P.M.

MARK FONG EU, Secretary of State

By [Signature]  
Deputy Secretary of State

1992 NOV 25 AM 10:29

OFFICE OF  
ADMINISTRATIVE LAWENDORSED  
APPROVED FOR FILING

JAN 11 1993

Office of Administrative Regulations

NOTICE

**A. PUBLICATION OF NOTICE** (Complete for publication in Notice Register)

1. TOPIC OF NOTICE Food Stamp Employment and Training (FSET) Conciliation, et. al.		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 92-1125-02C	PUBLICATION DATE 8-7-92

**B. SUBMISSION OF REGULATIONS** (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S)	ADOPT MPP 63-009; 63-407.58; and 63-502.2(n)
SECTIONS AFFECTED	AMEND 63-407.311, .56, .81, .83, .841 and .862; and 63-502.2(g)(1) REPEAL

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346) ☐ Resubmittal ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) ☐ Emergency (Gov. Code, § 11346.1(b))

☒ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only ☐ Other (specify) \_\_\_\_\_

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45) Sections 63-487.585,

November 6, 1992 through November 21, 1992 .83 and .832(c) and (f)

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State ☒ Effective on filing with Secretary of State ☐ Effective other (Specify) \_\_\_\_\_

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☒ Department of Finance (Form STD. 399) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify) \_\_\_\_\_

## 6. CONTACT PERSON

James Rhoads, Assistant Bureau Chief, Regulations Development Bureau

TELEPHONE NUMBER

(916) 657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

[Signature]

DATE

NOV 24 1992

TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

Adopt Section 63-009 to read:

63-009 IMPLEMENTATION OF FOOD STAMP EMPLOYMENT AND TRAINING  
PROGRAM NONDISCRETIONARY PROVISIONS FROM THE HUNGER  
PREVENTION ACT OF 1988

63-009

- .1 Effective August 1, 1992, CWDs shall implement the following revised and adopted provisions: Section 63-407.311 (a); Section 63-407.56; Section 63-407.58; Section 63-407.812; Sections 63-407.813, .814 and .815; Section 63-407.83; Section 63-407.841 (c); Section 63-407.862; and Sections 63-502.2 (g) (1), (g) (2) and (n).

Authority Cited: Sections 10554 and 18904, Welfare and Institutions Code.

Reference: Sections 10554 and 18904, Welfare and Institutions Code.

Adopt Section 63-407.58 and amend Sections 63-407.311, .56, .81, .83, .841 and .862 to read:

63-407 WORK REGISTRATION REQUIREMENTS (Continued)

63-407

.3 CWD Requirements

.31 (Continued)

.311 (Continued)

- (a) The applicant shall be informed that he/she may be deferred from FSET Program participation if monthly expenses identified in Section 63-407.83 exceed the allowable reimbursable amounts identified in that section.  
(Continued)

.4 Work Registrants Requirements (Continued)

.5 Failure to Comply (Continued)

- .56 Within 10 days of determining that noncompliance with any of the general Food Stamp work requirements at Sections 63-407.42, .43, and .44 was without good cause in accordance with Section 63-407.57, the CWD shall provide the individual or household with a Notice of Disqualification, [DFA 377.10 (7/89)]. Such notification shall contain a description of the act of noncompliance, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included describing the action which can be taken to end or avoid the sanction, and procedures contained in Section 63-407.6. This disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a state hearing is requested. If a state hearing is requested, continued participation shall be in accordance with Section 63-804.6. (Continued)

.58 Conciliation

The CWD shall determine if there is good cause and attempt to resolve the problems when a work registrant fails to comply with the FSET Program requirements specified in Section 63-407.41. The conciliation period shall begin on the day following the CWD's discovery of the noncompliance and shall not exceed 30 calendar days.

- .581 The CWD shall inform the registrant in writing of his/her opportunity to both demonstrate good cause for the noncompliance and to avoid Food Stamp sanctions by performing a verifiable act of compliance. The CWD shall issue the notice within four working days of the beginning of conciliation. The notice shall:

- (a) Identify the program requirement with which the registrant failed to comply.

- (b) Specify that the registrant has entered a period of conciliation that shall not exceed 30 calendar days.
- (c) State that the registrant shall contact the CWD either in person, by mail or by telephone to provide any information which demonstrates good cause for the noncompliance.
  - (1) The registrant shall be told of the need to provide this information within six working days following issuance of the notice required by Section 63-407.581.
- (d) Inform the registrant that failure to contact the CWD shall result in a cause determination based on available information.
- (e) Specify that if a determination of no good cause is made, the registrant can avoid Food Stamp sanctions by complying with program requirements.
- (f) Describe those costs identified in Section 63-407.83 for which the registrant may be reimbursed if such costs are necessary to enable the registrant to provide good cause information.
- (g) Identify the consequences of failing to comply by the end of conciliation.

.582 The CWD shall determine whether good cause existed for the noncompliance either on the sixth working day following issuance of the notice required by Section 63-407.581 or upon contact by the registrant, whichever occurs first. Good cause shall be determined as specified in Section 63-407.57.

- (a) If the registrant fails to contact the CWD, a cause determination shall be made based on available information.
- (b) Nothing in Section 63-407.582 shall prevent the registrant from submitting good cause information at any time within the period of conciliation.
  - (1) Such information shall be considered by the CWD and may result in the reversal of a no good cause determination.

.583 If the CWD determines that good cause existed for the noncompliance, the CWD shall:

- (a) Determine if the problem resulting in the noncompliance has been resolved so that the registrant can immediately resume participation.
- (b) Determine if the registrant should be exempted or deferred as specified in Sections 63-407.21 and .811.

.584 If the CWD determines that no good cause existed for the noncompliance, the CWD shall issue a notice informing the registrant of the no good cause determination and of the opportunity to avoid Food Stamp sanctions by complying with program requirements. The notice shall be issued within three (3) working days of the cause determination and shall:

- (a) Specify that the individual has been determined to be without good cause for failure to comply with program requirements.
- (b) Identify the program requirement with which the individual has failed to comply.
- (c) Remind the individual that conciliation shall not exceed 30 calendar days from the date the CWD discovered the noncompliance as specified in Section 63-407.58.
- (d) Describe the specific actions the registrant must take to achieve compliance and avoid sanctions.
- (e) Identify the date by which compliance must be achieved if sanctions are to be avoided.
  - (1) As specified in Section 63-407.585, this date is the final day of the 30-calendar-day conciliation period.
- (f) Describe those costs identified in Section 63-407.83 for which the registrant may be reimbursed if such costs are necessary to enable the registrant to achieve compliance during the period of conciliation.
- (g) Identify the consequences of failing to comply by the end of conciliation.

.585 Following a determination of no good cause as specified in Section 63-407.584, the registrant must perform a verifiable act of compliance if Food Stamp sanctions are to be avoided. Verbal commitment is not sufficient unless the registrant is prevented from complying by circumstances beyond his/her control such as the unavailability of a suitable component.

- (a) The registrant must comply by the end of the 30-calendar-day conciliation period identified in Section 63-407.58 if conciliation is to be considered successful.
- (b) Actions required for successful conciliation should be limited to those which can be accomplished within the 30-day time limit set forth in Section 63-407.58.



HANDBOOK BEGINS HERE

- (c) Activities which the CWD may require for successful conciliation include, but are not limited to, attending a job search workshop or submitting a report of job contacts.

HANDBOOK ENDS HERE

.586 If the registrant fails to comply by the end of conciliation, the CWD shall provide the individual or household with a Notice of Disqualification, [DFA 377.10 (7/89)]. (See Section 63-407.56 for a description of this notice.)

- (a) The notice shall be issued on the final day of conciliation.

.6 Ending Disqualification (Continued)

.7 Suitable Employment (Continued)

.8 Food Stamp Employment and Training Program (Continued)

.81 CWD Screening (Continued)

.812 The CWD shall attempt to place persons deferred due to excessive dependent care or transportation costs into a component in which such costs do not exceed the amount eligible for reimbursement as specified in Section 63-407.83.

- (a) If a suitable component is not available, individuals shall be deferred until an affordable component becomes available or individual circumstances change so that monthly expenses do not exceed maximum reimbursable rates.

.813 (Continued)

.814 (Continued)

.815 (Continued)

.82 Referral to FSET Program (Continued)

.83 Participant Reimbursement

As of July 1, 1989 and thereafter, the CWD shall reimburse participants, including volunteers and applicants, for costs that are reasonably necessary and directly related to participation as specified in Sections 63-407.831, .832 and .833. The CWD shall inform each participant that allowable expenses up to the amounts identified in this section shall be reimbursed upon presentation of appropriate documentation.

- .831 For transportation and other costs (except for dependent care costs), the CWD shall provide reimbursement of up to \$25.00 per participant per month.
- (a) Such expenses shall not include the cost of meals away from home.
- .832 For dependent care costs, the CWD shall reimburse the actual cost in an amount not to exceed \$160 per month per dependent.
- (a) (Continued)
- (b) Reimbursement, payment, or arrangement for dependent care shall not be made to an individual who is the caretaker relative of a dependent in a family receiving Aid to Families with Dependent Children. In addition, an FSET Program participant is not entitled to reimbursement for dependent care costs if a member of the participant's Food Stamp household provides the care.
- (c) Reimbursements shall be provided for the following dependents:
- (1) Children who have reached age six but who are under thirteen years of age; and
- (2) Persons who have reached age ~~thirteen~~ 13 but are physically/mentally incapacitated or under court supervision.
- (A) The CWD shall require verification when physical/mental incapacity or the need for court supervision is questionable.
- (d) The CWD shall verify the need for and cost of dependent care prior to reimbursing a participant for dependent care costs.
- (1) Such verification shall include the name and address of the care provider, provider costs and the number of hours for which care is needed.
- (e) A participant may refuse dependent care arranged by the CWD if he/she can arrange other care or show that the refusal will not interfere with participation.
- (f) Dependent care arranged by the CWD shall meet all applicable standards of state and local law including requirements for basic health and safety protection.
- .833 (Continued)

.84 Program Requirements (Continued)

.841 Program Components

In accordance with a federally approved state plan, CWDs shall provide any one or more of the following components. The following components shall be allowed to be provided for applicants or recipients: (Continued)

(c) Education/Training

(1) Vocational training which consists of a project, program or experiment, such as supported work program, or a Job Training Partnership Act program (JTPA) or state or local program aimed at accomplishing the purpose of the FSET Program.

(2) Education programs designed to improve a participant's basic skills or employability. Education activities include, but are not limited to, high school or equivalency programs, remedial education programs designed to achieve a basic literacy level, and instruction in English-as-a-Second-Language.

(A) Educational components shall be approved only if they directly enhance the employability of FSET Program participants. A direct link between educational components and job readiness shall be established. (Continued)

.85 Participation Requirements (Continued)

.86 Failure to Comply

.861 (Continued)

.862 Individuals who or households which are disqualified for failure to comply with the requirements of the FSET Program shall be notified as specified in Sections 63-407.56 and .586.

Authority Cited: Sections 10553, 10554 and 18904, Welfare and Institutions Code.

Reference: 7 CFR 273.1(d)(2); 7 CFR 273.7(d)(1)(ii)(A) and (E); 7 CFR 273.7(f), (f)(1)(vi), (f)(2), and (f)(4)(ii); and 7 CFR 273.7(g)(1)(ii) and (iii).

Adopt Section 63-502.2(n); amend Sections 63-502.2(g)(1) and (2); and renumber Sections 63-502.2(g)(1)(G) and (H) to (I) and (J), respectively.

63-502 INCOME, EXCLUSIONS AND DEDUCTIONS (Continued)

63-502

.2 Income Exclusions. Only the following items shall be excluded from household income:

(a)-(f) (Continued)

(g) (Continued)

(1) Excludable reimbursements which are not considered to be a gain or benefit to the household, include, but are not limited to the following:

(A) Reimbursements or flat allowances, including reimbursements made to the household as specified in Section 63-407.83, for job- or training-related expenses such as travel, per diem, uniforms and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.  
(Continued)

(B)-(F) (Continued)

(G) Reimbursements made to the household, as specified in Section 63-407.83, for expenses necessary for participation in an education component under the FSET Program.

(H) Payments or reimbursements made under an employment, education or training program initiated under Title IV-A of the Social Security Act after September 19, 1988, such as payments for GAIN supportive services.

(I) (Continued)

(J) (Continued)

(2) The following shall not be considered a reimbursement excludable under this provision:

(A) Portions of benefits provided under Title IV-A of the Social Security Act for work-related or child care expenses when adjustments have been made to the PA payments, except for such expenses made under an employment, education or training program initiated under Title IV-A after September 19, 1988. (Continued)

(h)-(m) (Continued)

(n) Any payment made to an FSET Program participant, as specified in Section 63-407.83, for costs that are reasonably necessary and directly related to participation in the FSET Program.

(1) These costs include, but are not limited to:

- (A) Dependent care costs, including the value of any dependent care service provided or arranged by the CWD;
- (B) Transportation; and
- (C) Other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment and books or training manuals.

(2) These costs shall not include the cost of meals away from home.  
(Continued)

Authority Cited: Sections 10553, 10554, 11209 and 18904, Welfare and Institutions Code.

Reference: Section 18901, Welfare and Institutions Code; Public Law 101-201; P.L. 100-50, Sections 22(e)(4) and 14(27), enacted June 3, 1987; P.L. 100-77; 7 CFR 271.2; 7 CFR 273.7(f); 7 CFR 273.9; 7 CFR 273.9(b)(1) and (c), 7 CFR 273.9(c)(1)(iv)(B) and (c)(3); 7 CFR 273.9(c)(5); 7 CFR 273.9(c)(5)(i)(A); 7 CFR 273.9(c)(5)(i)(C), (F) and (G) and (ii)(A); 7 CFR 273.9(c)(10); 7 CFR 273.9(c)(15); 7 CFR 273.9(d)(3)(vii); 7 CFR 273.9(d)(1) through (6); 7 CFR 273.11(d)(1), (Court Order re Final Partial Settlement Agreement in Jones v. Yeutter (C.D. Cal Feb. 1, 1990) \_\_\_\_\_ F. Supp. \_\_\_\_\_ [Dock. No. CV-89-0768]); P.L. 101-508, Section 11111(b); 26 U.S.C. 32(j)(5); U.S.D.A. Food and Nutrition Service Administrative Notice 91-30; and Waiver Letter WFS-100:FS-10-6-CA, dated October 2, 1990, United States Department of Agriculture, Food and Nutrition Service.

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 2-91)

AGENCY

State Department of Social Services

(reverse)

AGENCY FILE NUMBER (if any)

0592-18

OAL FILE  
NUMBERSNOTICE FILE NUMBER  
Z-92-0723-01

REGULATORY ACTION NUMBER

92-1125-030

EMERGENCY NUMBER

92-0722-03E

PREVIOUS REGULATORY ACTION NUMBER

For use by Office of Administrative Law (OAL) only

1992 NOV 25 AM 10:28  
 ENDORSED  
 APPROVED FOR FILING  
 ADMINISTRATIVE LAW  
 JAN 12 1993  
 Office of Administrative Law

NOTICE

REGULATIONS

FILED

In the office of the Secretary of State  
of the State of California

JAN 12 1993

At 3:18 O'clock P.M.

MAKCH FONG EU, Secretary of State

By John Lawrence  
Deputy Secretary of State

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE Monthly Reporting/Retrospective Budgeting(MR/RB) Emergency Tech. Amendments		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 92-1125-030	PUBLICATION DATE 8-7-92

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S)	ADOPT MPP 63-014 and 63-504.5
SECTIONS AFFECTED	AMEND 63-501.521; 63-503.212, .232, .242, .252, and .7; 63-504, .341, .353 and .391; 63-505.3 and .4
	REPEAL None

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346) ☐ Resubmittal ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) ☐ Emergency (Gov. Code, § 11346.1(b))

☒ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only ☐ Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45) Sections 63-014.43; November 6, 1992 - November 21, 1992 63-503.232(d)(2)(C) Handbook; and 63-504.341, .52 &amp; .52

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State ☒ Effective on filing with Secretary of State ☐ Effective other (Specify)

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify)

6. CONTACT PERSON  
Jim Rhoads, Assistant Bureau Chief, Regulations Development Bureau

TELEPHONE NUMBER  
(916) 657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson  
 TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

DATE

NOV 24 1992



Amend Section 63-014.4 to read:

63-014 IMPLEMENTATION OF MONTHLY REPORTING RETROSPECTIVE BUDGETING  
AMENDMENTS AND MASS CHANGES (P. L. 101-624)

63-014

HANDBOOK BEGINS HERE

These amendments are published in the final rule dated December 4, 1991 and a provision in the Mickey Leland Memorial Domestic Hunger Relief Act of 1990, Public Law 101-624.

HANDBOOK ENDS HERE

- .1 CWDs shall implement any changes in regulatory provisions for monthly reporting retrospective budgeting households or households subject to monthly reporting retrospective budgeting prospectively based on the effective date of these amendments regardless of budgeting method.
- .2 Section 63-014; Section 63-501.521(e); Sections 63-503.212(b)(2), (b)(3) and (c)(3), .232(b), (c)(2) and (d), .242(b)(3), .252(c), and .7; Sections 63-504.341(c) and (e), .353(a), .391(a), and .5; and Sections 63-505.31, .32, .4(e) and (f) as amended herein, shall become effective August 1, 1992.
- .3 The amended and adopted provisions as specified in Section 63-014.2 shall be implemented prospectively for all Food Stamp households beginning August 1, 1992.
- .4 A determination of entitlement to a restoration of lost benefits shall be made either upon request of the household, or when the CWD becomes aware that a household was denied benefits or would have been eligible for a higher allotment, and shall be implemented as follows:
  - .41 Any household that was denied benefits shall receive restored benefits back to July 1, 1992 or the date of application, whichever is later.
  - .42 Currently participating households shall receive benefits back to July 1, 1992 or the first month in which application of these provisions would have affected the household's benefits, whichever is later.
  - .43 Restoration of lost benefits does not apply to Section 63-501.521(e).

Authority Cited: Sections 10554 and 18904, Welfare and Institutions Code.

Reference: Sections 10554 and 18904, Welfare and Institutions Code and 7 CFR 273.21(s).

## .5 Resource Values (Continued)

## .52 Handling of Licensed Vehicles (Continued)

.521 The entire value of any licensed vehicle shall be excluded if vehicle meets any of the following conditions: (Continued)

(e) Necessary to transport a physically disabled household member, including an excluded disabled household member whose resources are being considered available to the household, as specified in Section 63-503.44, regardless of the purpose of such transportation.

(1) If the physical disability of the individual is not evident to the eligibility worker, verification shall be required.

(2) The individual shall be required to provide a statement from a physician certifying that the individual is physically disabled. The disability may be temporary or permanent.

(3) There shall be a limit of one vehicle per physically disabled household member.

(4) The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. However, a vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person.  
(Continued)

Authority Cited: Sections 10553, 10554, 11209 and 18904, Welfare and Institutions Code.

Reference: Section 18901, Welfare and Institutions Code and 7 CFR 272.8(e)(17), Public Law 101-201, P.L. 100-50, Sections 22(e)(4) and 14(27), enacted June 3, 1987; P.L. 101-508, Section 11111(b); 26 U.S.C. 32(j)(5); 42 U.S.C.A. 5122 as amended by P.L. 100-707, Section 105(i); U.S.D.A. Food and Nutrition Service Administrative Notice 91-30 and Index Policy Memo 90-22, dated July 12, 1990.

Amend Section 63-503.232(d)(2)(C) to read:

63-503 DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS (Continued) 63-503

.2 Determining Resources, Income and Deductions

.21 Prospective Budgeting in the Beginning Months for Households Who Shall be Subject to Retrospective Budgeting (Continued)

.212 Determining Income (Continued)

(b) Averaging Income

Households subject to retrospective budgeting shall not have their income averaged, even if their income fluctuates from month to month, except as provided below: (Continued)

(2) Nonexcluded scholarship, deferred educational loan, and educational grant income received by households less often than monthly. Such income, after exclusions, shall be averaged over the period it is intended to cover and shall not be prospectively counted in the beginning months for retrospectively budgeted households.

(3) Contract income received by households which derive their annual income in a period of time shorter than one year. Such income shall be averaged over the period it is intended to cover, provided the income from the contract is not earned on an hourly or piece-work basis. Such income shall not be prospectively counted in the beginning months for retrospectively budgeted households.

(c) Income Only in the Month Received (Continued)

(3) The CWD shall budget stable earned and unearned income which is received on a regular basis as a single monthly payment for the month such income is intended to cover. Households receiving such income shall not have their monthly income varied merely because mailing or payment cycles may cause two payments to be received in one month and none in the next month. (Continued)

.23 Households Subject to Retrospective Budgeting After the Beginning Months (Continued)

.232 Retrospective Budgeting

The CWD shall use the following income to retrospectively budget the household's level of benefits. (Continued)

(b) Averaged Income

For purposes of determining the household's level of benefits for the issuance month, the CWD shall take into account any income that has been averaged for the following households for the budget month.

- (1) Self-employment income received less often than monthly. Households which derive their annual income in a period of time shorter than one year shall have that income averaged over a 12-month period.
- (2) Nonexcluded scholarship, deferred educational loan, and educational grant income as specified in Section 63-503.212(b)(2). Such income shall not effect more benefit months than the number of months in the period over which it is averaged.
- (3) Contract income as specified in Section 63-503.212(b)(3). Such income shall not effect more benefit months than the number of months in the period over which it is averaged.

(c) Income Only in the Month Received

When determining the household's level of benefits for the issuance month, the CWD shall count as income only that amount actually received by the household in the budget month, except as provided below: (Continued)

- (2) The CWD shall budget stable earned and unearned income which is received on a regular basis as a single monthly payment for the month such income is intended to cover. Households receiving such income shall not have their monthly income varied merely because mailing or payment cycles may cause two payments to be received in one month and none in the next month. (Continued)

(d) Discontinued Income (Continued)

(1) In a Beginning Month

Discontinued income which was included in the household's prospective budget shall be disregarded when the beginning month becomes the budget month.

(2) After the Beginning Months

For households receiving AFDC, GA/GR, RCA, or ECA payments in the issuance month, discontinued income from the corresponding budget month shall be disregarded provided:

- (A) The household has reported the termination of the income on the monthly report for the budget month or in some other manner,
- (B) The CWD has sufficient time to process the change and affect the allotment in the issuance month corresponding to the budget month in which the income stopped, and
- (C) The AFDC, GA/GR, RCA, or ECA payments are increased as a result of the termination of the income.

HANDBOOK BEGINS HERE

1. EXAMPLE #1:

An ongoing AFDC Food Stamp household has been earning \$600 per month. The household reports on their June CA 7 that their job was terminated on June 15 and their last paycheck, received that date, was for \$300. The CWD will retrospectively budget the \$300 from June to determine the August AFDC grant. The increase in the AFDC August grant is the result of the reduced earned income, not terminated income. Therefore, the \$300 reported as June earnings will be budgeted retrospectively to determine the August Food Stamp allotment.

2. EXAMPLE #2:

An ongoing Food Stamp household applies for AFDC on June 20 due to the loss of employment. The household reports the receipt of \$300 earnings for June, which

is their final paycheck. In determining AFDC eligibility and grant amounts, the CWD will budget prospectively \$300 earnings for June and zero earnings for July, and retrospectively budget zero earnings for August (the issuance month). Since the August AFDC grant disregards earnings from June, that income will also be disregarded when determining the Food Stamp allotment.

HANDBOOK ENDS HERE

.24 Determining the Eligibility and Benefit Level of Households Excluded from Retrospective Budgeting (Continued)

.242 Determining Income (Continued)

(b) Income Only in the Month Received (Continued)

- (3) Households receiving assistance payments such as AFDC, GA/GR, RCA, ECA, or social security payments on a recurring, monthly basis, shall not have their monthly income from these sources varied merely because mailing or payment cycles may cause two payments to be received in one month and none in the next month. (Continued)

63-503 DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS (Continued) 63-503

.2 Determining Resources, Income and Deductions (Continued)

.25 Determining Deductions For All Households (Continued)

.252 Averaging Expenses (Continued)

- (c) For retrospectively budgeted households, the CWD shall budget deductible expenses averaged over two or more months retrospectively provided that such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses. The CWD shall continue to allow deductions for expenses incurred even if billed on other than a monthly basis unless the household reports a change in the expense. At that time, it shall be recalculated. (Continued)



.7 Certified Monthly Reporting Households Applying for Aid in a New County

- .71 The applications of households which were certified for Food Stamp Program participation in one county or state and which move to another county or this state and apply for benefits without at least a one-month break in certification, shall be treated as initial applications, except they shall continue to be retrospectively budgeted, as specified in Section 63-504.711. Households which have requested and are entitled to expedited service shall have their benefits available in accordance with Section 63-301.531(b).

.711 (Continued)

.712 (Continued)

Authority Cited: Sections 10554 and 18904, Welfare and Institutions Code.

Reference: 7 CFR 271.2, 7 CFR 272.3(c)(1)(ii); 7 CFR 273.1(b)(2)(iii), 7 CFR 273.10(c)(2)(iii); 7 CFR 273.11(a)(2)(i), (c), (c)(1), (c)(2)(iii), (c)(3)(ii), (d)(1), and (e)(1); 7 CFR 273.21(f)(2)(ii), (iii), (iv), and (v), (g)(3), (j)(1)(vii)(B), and (s); (Court Order re Final Partial Settlement Agreement in Jones v. Yeutter (C.D. Cal. Feb. 1, 1990) \_\_\_ F. Supp. \_\_\_ [Dock No. CV-89-0768]); Waiver Letter WFS-100:FS-10-6-CA, dated October 2, 1990, United States Department of Agriculture, Food and Nutrition Service; Administrative Notice No. 92-23, dated February 20, 1992; and P.L. 101-624.

Amend Sections 63-504.341(e) and .52 to read:

63-504 HOUSEHOLD CERTIFICATION AND CONTINUING ELIGIBILITY (Continued) 63-504

.3 Monthly Reporting (Continued)

.34 CWD Action on a Complete CA 7 Requiring Additional Verification/Information (Continued)

.341 The household shall provide with the CA 7 verification of the following items: (Continued)

(c) Housing costs when first allowed as a deduction and when there is a move;

(d) (Continued)

(e) Actual utility costs, if the household is claiming the actual expenses, when first allowed as a deduction, ~~if a change in amount is reported~~ and when there is a move; (Continued)

63-504 HOUSEHOLD CERTIFICATION AND CONTINUING ELIGIBILITY (Continued) 63-504

.3 Monthly Reporting (Continued)

.35 Action on Reported Information (Continued)

.353 (Continued)

(a) The CWD shall prospectively budget the new member's income and specific deduction in combination with the existing household's retrospectively budgeted income and deductions to determine the household's benefit level for the first two months the new member is added to the household. The entire household shall be retrospectively budgeted in the third and subsequent months. If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household and that new member's income had been budgeted retrospectively, the CWD shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

1. The CWD shall add a previously excluded member's income (an individual who was disqualified for an IPV or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien), retrospectively. The previously excluded member

shall be added to the household the month after the disqualification period ends. All other previously excluded members such as SSI/SSP individuals or ineligible students, shall have his/her income added prospectively in accordance with the procedures in paragraph (a) of this section. (Continued)

.3 Monthly Reporting (Continued)

.39 Mass Changes (Continued)

.391 Federal Adjustments to Eligibility Standards. Allotments, Deductions, and State Adjustments to the Standard Utility Allowance

- (a) These adjustments shall go into effect for all households at a specific point in time. Adjustments to the thrifty food plan, the standard deduction, shelter and dependent care deductions, and the maximum income eligibility standards shall be implemented prospectively regardless of the household's budgeting method. Adjustments shall be effective for all issuances upon the effective dates, as specified in Handbook Section 63-1101. (Continued)

63-504 HOUSEHOLD CERTIFICATION AND CONTINUING ELIGIBILITY (Continued)

63-504

.5 Procedures for households changing their reporting and budgeting status

.51 Households which become subject to monthly reporting/retrospective budgeting

The CWD shall change the reporting/budgeting status of households which become subject to monthly reporting at any time following the change in household circumstances which results in a change in the household's monthly reporting/retrospective budgeting status subject to the following conditions:

- .511 The CWD shall provide the household with information as specified in Section 63-300.41. If the CWD implements the change during the certification period, it may omit the oral explanations for monthly reporting/retrospective budgeting.

- .512 The CWD shall not require the household to submit a CA 7 during any month in which the household was subject to non monthly reporting requirements.

.52 Households which are no longer subject to monthly reporting/retrospective budgeting

The CWD shall use ~~one of~~ the following procedures to remove households from the monthly reporting/retrospective budgeting system.

.521 For any household which becomes exempt from the monthly reporting/retrospective budgeting system as specified in Section 63-505.21, the CWD shall notify the household within 10 days of the date the CWD becomes aware of the change that:

(a) ~~The~~ household has become exempt from monthly reporting and is no longer required to file any future CA 7s. This does not apply to households in which one or more household members are in receipt of cash aid from programs such as AFDC, GA/GR, RCA or ECA which do require a monthly report.

(b) ~~and~~ The household has also become exempt from retrospective budgeting, and when

(c) ~~The~~ change in budgeting will go into effect.

.522 The CWD shall begin determining the household's benefits prospectively in the first month that the household is no longer required to file a CA 7. (Continued)

Authority Cited: Sections 10554, 11265.1, and 18904, Welfare and Institutions Code.

Reference: 7 CFR 271.2; 7 CFR 273.8(b); 7 CFR 273.21(e)(1), (f)(1)(iii), (f)(1)(iv)(B), (h)(3), (h)(3)(ii), (j), (j)(1)(vi), and (r); 7 CFR 274.10; and P.L. 101-624.

.3 Reported Information for Monthly Reporting Households

Households shall report on a monthly basis, the following information about the household.

- .31 Budget month income, except as specified in Section 63-505.311, shelter and utility costs when there is a move, child care costs, household composition, and other circumstances relevant to the amount of the food stamp allotment. This information shall be reported on the CA 7.

.311 (Continued)

- .32 Any changes in income, shelter and utility costs when there is a move, child care costs, resources or other relevant circumstances affecting eligibility which the household expects to occur in the current month or in future months, or which occurred in the budget month.  
(Continued)

.4 Verification Responsibilities for Monthly Reporting Households (Continued)

Monthly reporting households shall provide verification of the following information reported on the CA 7: (Continued)

- (e) Utility costs, if the household is claiming actual expenses, when first allowed as a deduction and when the household moves;
- (f) Shelter costs when first allowed as a deduction or when the household moves; (Continued)

Authority Cited: Sections 10554 and 18904, Welfare and Institutions Code.

Reference: 7 CFR 273.11(a)(2)(iii); 7 CFR 273.12; 7 CFR 273.2(d); 7 CFR 273.21(b), (h)(3), and (i); and P.L. 101-624.

## NOTICE OF PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STANDARD FORM 400  
AGENCY

AGENCY FILE NUMBER (if any)

California Dept. of Social Services

0892-28

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

PREVIOUS REGULATORY ACTION NUMBER

93-0121-04E

For use by Office of Administrative Law (OAL) only

1993 JAN 21 PM 4:44  
OFFICE OF  
ADMINISTRATIVE LAWENDORSED  
APPROVED FOR FILINGFEB 01 1993  
REGULATIONS

NOTICE

FILED

In the office of the Secretary of State  
of the State of California

FEB 01 1993

At 4:05 O'clock P.M.

MARCH FONG EU, Secretary of State

By Kathleen J. MacLennan  
Deputy Secretary of State

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE <u>Miller II v. Woods</u>		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTIONS AFFECTED	ADOPT	TITLE(S) Manual of Policies and Procedures (MPP)	Section 50-018.1 et seq.
	AMEND		
	REPEAL	Existing Section 50-018 et seq.	

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346)  
☐ Resubmittal  
☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)  
☒ Emergency (Gov. Code, § 11346.1(b))  
☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only  
☐ Other (specify) \_\_\_\_\_

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

N/A

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State  
☒ Effective on filing with Secretary of State  
☐ Effective other (Specify) \_\_\_\_\_

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☒ Department of Finance (Form STD. 399)  
☐ Fair Political Practices Commission  
☐ State Fire Marshal  
☐ Other (Specify) \_\_\_\_\_

## 6. CONTACT PERSON

Jim Rhoads, Assistant Chief, Regulations Development Bureau

## TELEPHONE NUMBER

657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

DATE

JAN 20 1993



## NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 2-91) ( REVERSE)

INSTRUCTIONS FOR PUBLICATION OF NOTICE  
AND SUBMISSION OF REGULATIONS

The revised form STD. 400 replaces form STD. 398 (REV. 3/85) (Face Sheet for Filing Notice of Proposed Regulatory Action in the California Administrative Notice Register) and form STD. 400 (REV. 8/85) (Face Sheet for Filing Administrative Regulations with the Office of Administrative Law). Use the new form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

**ALL FILINGS**

Enter the agency name and agency file number, if any.

**NOTICES**

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations, the statement of reasons and a list of small businesses to whom the notice will be mailed, if any. If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified" and place a number in the box marked "Notice File Number." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

**REGULATIONS**

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Government Code § 11347.3 for rulemaking file contents.)

**RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS**

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the number of the previously disapproved or withdrawn filing in the box marked

"Previous Regulatory Action Number" at the top of the form and submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Government Code §§ 11349.4 and 11347.3 for more specific requirements.)

**EMERGENCY REGULATIONS**

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Government Code § 11346.1 for other requirements.)

**NOTICE FOLLOWING EMERGENCY ACTION**

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A only. Please insert the OAL number for the original emergency filing in the box marked "Emergency Number" at the top of the form. OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

**CERTIFICATE OF COMPLIANCE**

When filing the certificate of compliance for emergency regulations, fill out Part B on the form that was previously submitted with the notice, or, if a new STD. 400 is used, please include the previously assigned numbers in the boxes marked "Notice File Number" and "Emergency Number." The materials indicated in these instructions for "REGULATIONS" must also be submitted.

**EMERGENCY REGULATIONS - READOPTION**

When submitting previously approved emergency regulations for readoption, use a new STD. 400 and fill out Part B, including the signed certification, and enter the OAL number of the original emergency filing in the box marked "Emergency Number" at the top of the form.

If you have any questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law at (916) 323-6225 or ATSS 473-6225.

## PUBLIC NOTICE

February 17, 1993 Public Hearing

## ITEM #3

Miller II v. Woods

## CHAPTERS

Manual of Policies and Procedures (MPP), Division 50, Sections 50-018.1 - Background; 50-018.2 - Notification of Potential Claims; 50-018.3 - Application for Retroactive Payments and Underpayments; 50-018.4 - Claim Processing; 50-018.5 - Use of County Worksheet to Document Findings and Calculate Payments Due; 50-018.6 - General Provisions; 50-018.7 - Monitoring CWD Compliance; and 50-018.8 - Appendix - Forms.

## INFORMATIVE DIGEST

On July 19, 1991, the court approved the settlement agreement in the second implementation of the Miller v. Woods court case, also known as Miller II, regarding payments under the In-Home Supportive Services (IHSS) Program. The judgment requires that retroactive payments and/or underpayments to eligible claimants be calculated through the use of: 1) existing case file information and a Standard Claim Form developed by the State Department of Social Services (SDSS); or 2) a Supplemental Claim Form developed by SDSS, in the event the case file information is missing or incomplete. In addition to requiring retroactive payments and/or underpayments, the judgment requires that prejudgment interest be paid on retroactive payments. Current IHSS regulations do not address how retroactive payments and/or underpayments are to be claimed and determined. These regulations would set up a procedure by which retroactive payments and/or underpayments under the court judgment can be processed and paid to eligible claimants. Regulatory requirements would be established within each of the sections spelled out above, excluding Section 50-018.1.

Existing regulations in Section 50-018 would be repealed by the adoption of these proposed regulations.

## COST ESTIMATE

1. Costs or Savings to State Agencies: Additional expenditures of approximately \$11,744,000 - FY 92/93 (supplemental funding is currently included in the 1992 Budget Act).
2. Costs to Local Agencies or School Districts: Additional local agency expenditures of approximately \$137,000 - FY 92/93 (these funds are currently scheduled in the Budget Act).
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No fiscal impact on federal funding to state agencies.

#### LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Sections 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by court order in Miller v. Woods amended judgment.

#### STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES AND OF ALTERNATIVES CONSIDERED

SDSS has determined that there will be no cost impact on private persons or businesses.

SDSS must determine that no alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected persons than the proposed action.

#### SMALL BUSINESS IMPACT STATEMENT

SDSS has determined that there will be no adverse impact on small businesses because these regulations do not apply to small businesses.

#### AUTHORITY AND REFERENCE CITATIONS

These emergency regulations are proposed for adoption pursuant to the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. The cited references are: Miller v. Woods, amended judgement, July 19, 1991; Sections 10950, 12300, 12303.5, 12304 and 12304.5, Welfare and Institutions Code; and 20 CFR 416.1806 through 1832.

#### EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

## DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

The amended judgment regarding Miller v. Woods dated July 19, 1991 stipulates the immediate implementation of the terms of the judgment contained in the regulations concerning the processing of claims for retroactive payments and/or underpayments in the In-Home Supportive Services (IHSS) Program. Any delay will:

1. deprive IHSS applicants and recipients of housemate providers;
2. increase the risk of institutionalization of persons otherwise able to remain in their homes with a housemate provider compensated under the IHSS Program;
3. impose substantial economic hardship on housemate providers who have provided or continue to provide uncompensated protective supervision services to eligible applicants and recipients;
4. and impose substantial economic hardship on recipients who have paid housemate providers for protective supervision and who have not been compensated under the IHSS Program.

Additionally, further delay in implementing these rules would also require additional administrative time and expense in order to grant interest to claimants found eligible to receive retroactive payments.

## INFORMATIVE DIGEST

On July 19, 1991, the court approved the settlement agreement in the second implementation of the Miller v. Woods court case, also known as Miller II, regarding payments under the IHSS Program. The judgment requires that retroactive payments and/or underpayments to eligible claimants be calculated through the use of: 1) existing case file information and a Standard Claim Form developed by the State Department of Social Services (DSS); or 2) a Supplemental Claim Form developed by DSS, in the event the case file information is missing or incomplete. In addition to requiring retroactive payments and/or underpayments, the judgment requires that prejudgment interest be paid on retroactive payments. Current IHSS regulations do not address how retroactive payments and/or underpayments are to be claimed and determined. These regulations would set up a procedure by which retroactive payments and/or underpayments under the court judgment can be processed and paid to eligible claimants. Regulatory requirements would be established within each of the sections spelled out above, excluding Section 50-018.1.

Existing regulations in Section 50-018 would be repealed by the adoption of these proposed regulations.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: Additional expenditures of approximately \$11,744,000 - FY 92/93 (supplemental funding is currently included in the 1992 Budget Act).
2. Costs to Local Agencies or School Districts: Additional local agency expenditures of approximately \$137,000 - FY 92/93 (these funds are currently scheduled in the Budget Act).
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No fiscal impact on federal funding to state agencies.

#### LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Sections 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by court order in Miller v. Woods amended judgement.

#### AUTHORITY AND REFERENCE CITATIONS

These emergency regulations are proposed for adoption pursuant to the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. The cited references are: Miller v. Woods, amended judgement, July 19, 1991; Sections 10950, 12300, 12303.5, 12304 and 12304.5, Welfare and Institutions Code; and 20 CFR 416.1806 through 1832.

#### EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

## INITIAL STATEMENT OF REASONS

- a) Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations Are Intended to Address

On July 19, 1991, the court approved the settlement agreement in the second implementation of the Miller v. Woods court case, also known as Miller II, regarding payments under the In-Home Supportive Services (IHSS) Program. The judgment requires that retroactive payments and/or underpayments to eligible claimants be calculated through the use of: 1) existing case file information and a Standard Claim Form developed by the State Department of Social Services (SDSS); or 2) a Supplemental Claim Form developed by SDSS, in the event the case file information is missing or incomplete. In addition to requiring retroactive payments and/or underpayments, the judgment requires that prejudgment interest be paid on retroactive payments. Current IHSS regulations do not address how retroactive payments and/or underpayments are to be claimed and determined. These regulations are intended to set up a procedure by which retroactive payments and/or underpayments under the court judgment can be processed and paid to eligible claimants.

- b) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 50-018.1Specific Purpose:

Section 50-018.1 is nonregulatory material intended to provide a background for the provisions contained in these regulations so that they may be understood in the context of the historical perspective from which they arise.

Sections 50-018.2 through .214 specify the outreach activities and materials that SDSS shall use to inform potentially eligible persons of the availability of retroactive payments and/or underpayments.

Factual Basis:

These requirements for notification to potentially eligible persons are necessary to comply with paragraph IV C. of the Miller v. Woods amended judgment. County welfare departments (CWDs) are required to carry out specific measures to inform potential claimants in commonly convenient locations and languages.

Section 50-018.22Specific Purpose:

This provision requires that the claim period for retroactive payments and/or underpayments be the eight-month period beginning with the effective date of these regulations.

Factual Basis:

This provision is necessary to comply with paragraph V.A of the judgment which requires that claims for retroactive payments and/or underpayments be accepted at all CWD offices for a period of eight months, beginning with the effective date of the retroactive payment/underpayment regulations implementing the judgment.

Section 50-018.23

Specific Purpose:

This section and its subsections are intended to specify that CWDs are responsible for providing outreach activities to potentially eligible claimants throughout the claim period by placing posters, supplied by SDSS, in prominent locations in each local office having public contact and by providing Explanatory Flyers and Standard Claim Forms to any person inquiring about retroactive payments and/or underpayments due for Miller II.

Factual Basis:

This section and its subsections are necessary to comply with the Miller II outreach requirements contained in paragraph IV.C. and IV.C.4 and 5 of the judgment and to make specific the counties' responsibilities in informing persons potentially eligible to receive retroactive payments and/or underpayments. The court approved the Poster and the Explanatory Flyers.

Section 50-018.24

Specific Purpose:

This section requires that SDSS reopen specific Miller I cases from the first implementation that were denied solely for the reasons that the claim was received after the end of the claim period. The CWDs shall process these reopened cases as Miller II cases and shall follow Miller II processes and procedures set forth in these regulations.

Factual Basis:

This section is necessary to comply with the process for reopening Miller I claims contained in paragraph IV.B.5, in order to reconsider claims which were denied in Miller I solely because they were received after the claim period ended.

Sections 50-018.3, .31, and .311

Specific Purpose:

These sections include claimant cooperation as one of the conditions for eligibility.

Factual Basis:

These regulations are necessary to provide counties with a basis for denying a claim when the CWD has requested the claimant to complete either the Standard Claim Form or the Supplemental Claim Form and the claimant fails to respond.

Section 50-018.312

Specific Purpose:

This section requires that all potentially eligible claimants file for retroactive payments and/or underpayments on the Miller v. Woods II Standard Claim Form developed by SDSS.

Factual Basis:

A completed claim form is needed to have a rational means of identifying and determining when a person qualifies, or may qualify, for retroactive payments and/or underpayments under this court case. This provision is necessary to comply with paragraph V.C.1.a of the judgment which specifies that all claims for retroactive payments and/or underpayments must be filed on the claim form described in the judgment. The Standard Claim Form was approved by the court.

Section 50-018.313

Specific Purpose:

This section requires that the claimant complete the claim form, sign it under penalty of perjury and obtain the signature of a witness.

Factual Basis:

This provision is necessary to comply with paragraph V.C.1.b. of the judgment which requires that claim forms be filled out completely and executed under penalty of perjury and that the form also be signed by a witness.

Section 50-018.314

Specific Purpose:

This regulation provides for a September 30, 1993 deadline for filing claims.

Factual Basis:

This provision is necessary to comply with paragraph V.A. of the judgment which specifies that the time period for filing claims is limited to a period of eight months, beginning with the effective date of these regulations. The September 30, 1993 date is eight months from the date it is anticipated these regulations will become effective.



Sections 50-018.315 and .316

Specific Purpose:

These sections provide that if a claimant is sent a request from the CWD to further complete either the Standard Claim Form, or the Supplemental Claim Form, the claimant must return the completed form to the requesting CWD within 45 days or the claim will be denied. Also, the regulations specify that all references to "days" shall mean "calendar days" unless otherwise specified.

Factual Basis:

These provisions are necessary to comply with paragraph V.C.1.b. of the judgment which requires that if the Standard Claim Form has not been completed in its entirety, or if additional information is needed and the CWD sends the claimant a Notice of Action with a request for the additional or missing information, the claimant must return the information to the CWD within 45 days or the claim is to be denied. The Department believes that it is necessary to specify that "days" means "calendar days" in order to provide clarity for the user of the regulations. Forty-five working days would constitute an unnecessarily long processing time.

Sections 50-018.32(a) through (d)

Specific Purpose:

These regulations specify how the filing date is to be determined by the CWD.

Factual Basis:

These regulations are necessary to comply with paragraph V.A.1 of the judgment which specifies that the date of filing for retroactive payment and/or underpayment claims be determined by either the postmarked date, or, if the claim is filed in person at the CWD, the date stamped by the CWD. If the date cannot be determined by either a postmark or CWD date stamp, paragraph V.A.1 of the judgment provides that the filing date be the date in which the claimant signed the form.

Section 50-018.32(e)

Specific Purpose:

This section preserves the claimant's original filing date when he/she has submitted the claim to the wrong CWD.

Factual Basis:

This provision is needed so that inadvertent errors in submitting a claim to an inappropriate CWD does not work to deny retroactive payments and/or underpayments to a claimant who might otherwise be eligible.

Section 50-018.32(f)

Specific Purpose:

This section provides that CWDs shall deny those claims which are submitted after the end of the claim period.

Factual Basis:

This section is necessary to comply with paragraph V.A of the judgment which establishes the eight-month period, beginning with the effective date of these regulations as the deadline for filing claims. Since a claim filed after the final filing date cannot be processed, CWDs shall issue a formal denial from which the claimant may file an appeal.

Section 50-018.32(g)

Specific Purpose:

This section establishes the method(s) by which the filing date is to be determined when the CWD has determined that a Supplemental Claim Form must be used to further determine eligibility for retroactive payments and/or underpayments.

Factual Basis:

This section is necessary to ensure that neither claimants nor counties are penalized when the CWD determines that the information provided on the Standard Claim Form and/or case record is not sufficient. Counties are required, under Section 50-018.32(k), to process all claims within 45 days of the date of filing. Since it is probable that a CWD will be well into the 45-day period before it is discovered that a Supplemental Claim Form is needed, SDSS concluded that it is only reasonable to provide counties with a new 45-day period in which to determine eligibility and payments due.

Section 50-018.32(h)

Specific Purpose:

This section and its subsections specify the action(s) to be taken by the CWD when it is determined that the person who it is claimed received protective supervision received the service while residing in another county during the period claimed.

Factual Basis:

This section and its subsections are necessary to ensure that counties process only those claims which are appropriate and that those counties receiving claims forwarded from other counties are afforded the same amount of time in which to process the claim as other counties. SDSS has determined that 10 calendar days is sufficient time for a county to process the claim for mailing and to allow for the delivery of mail. By requiring

an explanatory Notice of Action, claimants will be kept informed of the delay in processing but, since the second county will be using the filing date established by the original receiving county, the claimant will not be penalized by the delay.

Section 50-018.32(i)

Specific Purpose:

This subsection specifies that the filing date for a Miller I reopened claim, in order to be considered for retroactive payments under Miller II, shall be the date the claim was originally filed under Miller I. The filing date for the claim for underpayments shall be the date determined by the postmark on the returned claim for underpayments, or as otherwise stipulated in Section 50-018.32.

Factual Basis:

Paragraph IV.B.5 requires the counties to process reopened Miller I claims during the regular Miller II claims process according to these regulations. This provision specifies how the filing date for consideration of retroactive payments under Miller II is to be determined for reopened Miller I claims, as well as the filing date for consideration of underpayments under Miller II.

Section 50-018.32(j)

Specific Purpose:

These subsections specify that counties have a total of 45 days from the date of filing to determine eligibility/ineligibility, compute retroactive payments and/or underpayments due and provide SDSS' Case Management Information and Payrolling System (CMIPS) with this information so that the CMIPS can compute the total amount due and interest due and return this information to the CWD within 5 working days.

Factual Basis:

These provisions are necessary to ensure that the requirement in paragraph V.C.11 of the judgment is met. That requirement specifies that counties issue a Notice of Action within 60 days from the date of receipt of the claim containing a breakdown of the actual payments due, with and without interest by month and by year. SDSS determined, however, that there was a need to require counties to complete the computations before the 60 days to ensure that sufficient information was obtained in time to meet the 60-day notice requirement. SDSS' Case Management Information and Payrolling System (CMIPS) is currently responsible for the provider payrolling function in the IHSS Program. The CMIPS has therefore been given the responsibility for processing all the Miller II data to ensure that CWDs are provided with all information needed for Notices of Action and payment. Since the CMIPS process will require additional time (SDSS concluded that 15 days would be needed for the CWD input and the CMIPS turnaround) the Department shortened the 60-day time limit required by the judgment to 45 days.

Section 50-018.32(k)

Specific Purpose:

This section specifies that the CWD issue a Notice of Action containing final computations/determinations within 10 working days of receiving the computation from CMIPS and that once the Notice has been sent, the CWD must take the appropriate steps in notifying CMIPS to issue the retroactive payment and/or underpayment.

Factual Basis:

This provision is necessary to ensure that counties meet the 60-day deadline for sending Notices of Action, as required in V.C.11 of the judgment. Additionally, the requirement that counties send the necessary payment documents through CMIPS is based on the fact that CMIPS is currently responsible for all payrolling activities in the IHSS Program and will be for the Miller v. Woods II retroactive payments and/or underpayments.

Section 50-018.32(l)

Specific Purpose:

This section establishes a 45-day processing deadline for the CWD which has received a claim from another county due to a determination that protective supervision services were provided/received in the second county.

Factual Basis:

It has been determined by SDSS that when one county receives a claim from another county, it should not result in the second county having less time in which to process the claim. Therefore, the second county will be given 45 days in which to process the claim.

Section 50-018.32(m)

Specific Purpose:

This section specifies that counties will not be penalized if the specified 45- and 60-day deadlines are not met, provided that the reason(s) for the delay(s) is due to circumstances beyond the control of the CWD and that such circumstances are documented in the case record.

Factual Basis:

SDSS determined that there will be instances where the CWD has difficulty meeting the deadlines for such reasons as delays in locating the case record and in receiving necessary documents in the mail from claimants or from CMIPS. SDSS further determined that under certain circumstances, and with appropriate documentation, such delays should not be determined noncompliance issues.

Section 50-018.32(n)

Specific Purpose:

This provision specifies that, unless otherwise indicated, all references to "days" in this section regarding time limits shall be construed as "calendar" days.

Factual Basis:

This regulation is needed to clarify what type of "day" is intended if it is not specified. This provision was added at the request of some counties in order to aid them in conforming to the specific time limits.

Sections 50-018.33 and .331

Specific Purpose:

These sections establish the periods of eligibility for retroactive payments to the following: April 1, 1979 through April 30, 1984 for nonspouse providers and April 1, 1979 through July 31, 1981 for spouse providers.

Factual Basis:

These regulations are necessary to comply with paragraph II. B. of the court judgment which specifies/limits the entitlement of retroactive payments for nonspouse and spouse providers to these time periods.

Section 50-018.332

Specific Purpose:

This section specifies that for those months claimed by nonspouse providers which exceed the time periods described in Section 50-018.331(a), the claim and any payments determined due will be processed as underpayments only, for the period May 1, 1984 through August 31, 1985, in accordance with MPP Section 30-768.4.

Factual Basis:

This regulation is necessary for compliance with paragraph II.C. of the court judgment which provides that class members are entitled to underpayments from May 1, 1984 through August 31, 1985, due to county errors in incorrectly paying for protective supervision and that underpayments are to be issued in accordance with departmental regulations governing underpayments (MPP 30-768.4). Since, however, the beginning date for underpayments is May 1, 1984, and the end of the retroactive period for nonspouse providers ends on April 30, 1984 (as opposed to July 31, 1981 for spouse providers), this regulation limits the eligibility for Miller II underpayments to nonspouse providers.

#### Sections 50-018.4 through .413

##### Specific Purpose:

These sections and their subsections specify the qualifying conditions for class membership.

##### Factual Basis:

These provisions are necessary to comply with paragraphs V.B.1, .2, and .3 of the judgment, which specify the eligibility conditions for class membership as follows: 1) The IHSS recipient or applicant met (a) the general IHSS eligibility conditions and (b) the specific conditions for having a need for protective supervision during each month for which retroactive payments are claimed; 2) The provider was a housemate provider who performed protective supervision services for the eligible recipient/applicant during the month(s) claimed; and, 3) The recipient/applicant received less than the statutory grant maximum during the month(s) claimed, including any share of cost.

Further, eligibility criteria for spouse claimants was added as Section 50-018.412 because, as paragraph II.B.2 of the judgment specifies, spouse provider claimants are entitled to retroactive payments from April 1, 1979 through July 31, 1981, not through April 30, 1984, as other provider claimants. Also, upon agreement with the plaintiff's counsel, spouse providers are not eligible to receive underpayments under Miller II, but will be referred to another court case (WRO v. McMahon). The counties thus need some criteria or definition by which to differentiate spouse provider claimants from other housemate provider claimants.

#### Sections 50-018.42

##### Specific Purpose:

This section and its subsections specify the process by which the CWD reviews the claims to determine if the claimant responded affirmatively to the qualifying questions for class membership and the regulations clarify that the claimant is not required to answer all the questions in the affirmative in order to be eligible. These provisions also require the CWD to deny the claim when certain responses are not in the affirmative and to issue a Supplemental Claim Form to the claimant when he/she does not know the answer to the qualifying questions.

##### Factual Basis:

These provisions are necessary for establishing the first element of review for retroactive payments and/or underpayments. SDSS determined that the first element should be determining whether or not the claimant is a class member, because it would be administratively inefficient for the CWD to further process the claim if the claimant is not a class member.

These provisions are also necessary to provide the CWD with a basis for denial when certain qualifying questions have not been answered in the affirmative and it provides the CWD with steps to be taken when the claimant is unsure of certain answers. This prevents a penalty to those claimants who are unsure about whether or not the person who received protective supervision services either applied for, was denied, or received IHSS during the retroactive period. Requiring the CWD to issue a Supplemental Claim Form when the answers are "unknown" provides the claimant with the benefit of further review by the CWD to determine eligibility rather than an immediate disqualification. The Supplemental Claim Form was approved by the court.

Sections 50-018.43, .431(a) through (g), .432, .433, and .434

Specific Purpose:

This section and its subsections set forth the conditions under which the CWD is to consider the claim form complete; instructs the CWD to return the form to the claimant if it is incomplete, permitting the claimant 45 days to complete and return the form; and allows the CWD to deny the claim if the form is not completed and returned within the time allotted.

Factual Basis:

These provisions are necessary to comply with paragraph V.C.1 of the court judgment which requires that all claim forms be filled out completely. The judgment also requires that if these conditions are not met, the claim is to be denied for insufficient information.

Section 50-018.441

Specific Purpose:

This section sets forth the conditions under which the CWD is to issue a Supplemental Claim Form to the claimant and it explains how the completed form is to be used. Additionally, this provision requires the CWD to include a Notice of Action with the Supplemental Claim Form explaining why the completion of the form is necessary and that it must be completed and returned to the CWD within 45 days.

Factual Basis:

This provision is necessary to comply with paragraph IV.C.4 of the judgment which requires that the Supplemental Claim Form be used for claimants where the person who needed protective supervision was not authorized IHSS. Although having had an authorization for IHSS during the retroactive period is not a condition for class membership/retroactive payments in Miller II, the eligibility for IHSS during that period is necessary and is required under paragraph V.B.1 of the judgment. The information provided by claimants on the Supplemental Claim Form will enable CWDs to determine whether or not the person who received protective supervision met, or would have met, the general IHSS eligibility conditions during the period claimed. SDSS also determined that the Supplemental Claim Form should be used

whenever the CWD has not been able to locate a case record. Obtaining the needed information from the form will allow CWDs to expeditiously determine IHSS eligibility for the period claimed.

#### Section 50-018.442

##### Specific Purpose:

This section specifies that when the CWD has received a Supplemental Claim Form, the CWD must follow the date stamp and retention provisions found in Section 50-018.32. This section also specifies that the new filing date be determined as it is with the Standard Claim Form.

##### Factual Basis:

This regulation is necessary to establish a procedure for counties to use when receiving Supplemental Claim Forms. SDSS concluded that claimants should not be penalized when the information on the Standard Claim Form proves insufficient; therefore, the intake procedures for these forms should not be any different from those established for the Standard Claim Forms.

#### Section 50-018.443

##### Specific Purpose:

This section specifies the criteria for determining the completeness of the Supplemental Claim Form when received by the CWD.

##### Factual Basis:

Paragraph V.C.1.b. of the court judgment specifies the criteria for determining the completeness of the Standard Claim Form (see statement regarding Standard Claim Form above). SDSS determined that this same criteria should be applied when determining the completeness of the Supplemental Claim Form and restart the processing period.

#### Section 50-018.444

##### Specific Purpose:

This section specifies the action to be taken by the CWD when a Supplemental Claim Form has not been completed in its entirety.

##### Factual Basis:

SDSS has determined that the action to be taken by counties when a Supplemental Claim Form is incomplete should not be any different from the action taken on incomplete Standard Claim Forms, which is based on the conditions found in paragraph V.C.1.b. of the court judgment. This section and its subsections provide a basis for denial when the claimant has been given an opportunity to appropriately complete the form but resubmits it and it is still not complete.



#### Section 50-018.445

##### Specific Purpose:

This section specifies that when the claimant has not submitted the Supplemental Claim Form within the required 45-day period, the CWD is to deny the claim for the period in question.

##### Factual Basis:

This section is needed to provide a basis for denying a claim when the claimant has failed to respond to the CWDs request for a completed Supplemental Claim Form. The rationale is based on paragraph V.C.1.b. of the court judgment, which specifies that when a Standard Claim Form has not been completely filled out, the claimant is to be allowed 45 days to provide the additional information or the claim is to be denied. SDSS determined that the same conditions should be met when the completion of the Supplemental Claim Form has been requested.

#### Section 50-018.446

##### Specific Purpose:

This section provides for the presumption of IHSS eligibility during the period claimed when the Supplemental Claim Form is used and for the issuance of a Notice of Action for Adverse Information when the CWD has information contradictory to that which the claimant has provided. The claimant shall have 45 days to respond and provide additional information to rebut, if available.

##### Factual Basis:

This regulation is needed to comply with paragraphs V.C.4 and 5 of the court judgment which specify that information and verification supplied by the claimant is limited to either that which is required by the Standard Claim Form or the Supplemental Claim Form and that only the combination of the information on these forms and the CWD case files will be used to determine eligibility. However, V.C.6.b and V.C.7.c stipulate that the CWD must advise the claimant of any adverse contradictory information regarding the recipient's need for and provision of protective supervision services, and allow the claimant an opportunity to submit further information supporting the claim.

#### Section 50-018.45

##### Specific Purpose:

This section and its subsections require that the CWD attempt to locate existing case files when determining eligibility, that a Supplemental Claim Form must be issued when a case file cannot be located, and that all documents received and/or obtained in relation to Miller II must be retained in case files.

Factual Basis:

These provisions are necessary in order to provide a uniform means of determining eligibility for retroactive payments and/or underpayments, and a uniform means of maintaining all documents by CWDs relating to Miller II.

Section 50-018.461

Specific Purpose:

This section and its subsections specify the conditions under which an IHSS applicant/recipient is presumed to have needed protective supervision during the period claimed.

Factual Basis:

This provision is needed in order to comply with paragraph V.C.6 of the court judgment which sets forth the conditions under which an applicant or a recipient is presumed to have needed protective supervision.

Section 50-018.462

Specific Purpose:

This section specifies the conditions under which the CWD is to presume that protective supervision services were rendered during the period claimed.

Factual Basis:

This regulation is needed in order to comply with paragraph V.C.7 of the court judgment which specifies the conditions under which the CWD must presume that protective supervision services were provided and that they were not rendered voluntarily.

Section 50-018.463

Specific Purpose:

This section specifies the action to be taken by the CWD when it has information which rebuts the presumption of need for protective supervision.

Factual Basis:

This regulation is needed to comply with paragraphs V.C.6.b and V.C.7.c of the court judgment which specify that the CWD may rebut the information supplied by the claimant if the CWD has contradictory information in its possession that indicates that protective supervision services were either not needed and/or not rendered during the months claimed. According to the judgment, the CWD must advise the claimant of the contradictory information, through the issuance of a Notice of Action for Adverse Information, and allow the claimant 45 days to submit further information supporting the claim.

#### Section 50-018.464

##### Specific Purpose:

This section sets forth a condition upon which the CWD is to issue a Supplemental Claim Form to the claimant and explains how the completed form is to be used. Additionally, this provision requires the CWD to include a Notice of Action with the Supplemental Claim Form explaining why the completion of the form is necessary and that it must be completed and returned to the CWD within 45 days. The CWD will then determine whether the information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed. If it does, the CWD shall continue to process the claim to determine eligibility for payments. If it does not, the CWD shall issue a denial Notice of Action stating the specific reasons for the denial.

##### Factual Basis:

This provision is necessary to comply with paragraph IV.C.4 of the judgment which requires that the Supplemental Claim Form be used for claimants where the persons who needed protective supervision was not authorized IHSS. Although having had an authorization for IHSS during the retroactive period is not a condition for class membership/retroactive payments in Miller v. Woods II, the eligibility for IHSS during that period is necessary and is required under paragraph V.B.1 of the judgment. The information provided by claimants on the Supplemental Claim Form will enable CWDs to determine whether or not the person who received protective supervision met, or would have met, the general IHSS eligibility conditions during the period claimed. SDSS also determined that the Supplemental Claim Form should be used whenever the CWD has not been able to locate a case record. Obtaining the needed information from the form will allow CWDs to expeditiously determine IHSS eligibility for the period claimed.

Additionally, paragraph V.C stipulates that information from the Supplemental Claim Form will be used to determine eligibility for retroactive payments and/or underpayments.

#### Section 50-018.47

##### Specific Purpose:

This section specifies the process by which Miller I claims which were denied solely because of untimely filing, will be reopened for consideration of retroactive payments and prejudgment interest under Miller II. These claimants will be sent a Notice of Action explaining that their case is being reopened for consideration under Miller II and that they should complete the attached Miller II Standard Claim Form only if the claimant desires to make a claim for underpayments. The CWD shall process the reopened Miller I claims for retroactive payments and prejudgment interest, and for underpayments under Miller II if the claimant returns the Standard Claim Form, in accordance with these regulations.

Factual Basis:

This section is necessary to comply with paragraph IV.B of the judgment which requires SDSS to reopen Miller I claims denied as untimely filed up until June 30, 1989, a date which has subsequently been rescinded by SDSS. SDSS has agreed to reopen late claims regardless of when they were submitted. Paragraph IV.B.1 through 5 of the judgment describes the process by which these claimants will be identified by CMIPS and notified of the reopening of their claims, which will be reconsidered for retroactive payments and prejudgment interest. They will be instructed to fill out the Standard Claim Form if they wish to be considered for underpayments. All determinations will be in accordance with these regulations.

Section 50-018.48

Specific Purpose:

This section and its subsections stipulate that Miller II claimants who had previously filed Miller I claims during the claim period of September 9, 1988 through March 9, 1989, which resulted in an approval, denial, or partial approval/denial, shall have their Miller II claims processed for underpayments only.

Factual Basis:

This section is necessary because although paragraph IV.A.1 of the judgment requires that SDSS send notices to individual providers who at any time lived at the same address as a recipient for the period January 1980 through April 1984, including those with granted Miller I claims, SDSS has determined that any further consideration of these claims for retroactive payments and prejudgment interest would be redundant and duplicative, as these claims have been considered for retroactive payments during the Miller I claim period.

Section 50-018.491

Specific Purpose:

This section prohibits spouse providers from eligibility for underpayments under Miller II as their eligibility for retroactive payments extends only through July 1981, and stipulates that spouse providers making a claim for underpayments under Miller II shall have their underpayment claim denied, with a Notice of Action stating the reason for denial and that their claim is being referred to WRO for consideration for underpayments.

Factual Basis:

This regulation was formulated at the realization that, due to the Miller II underpayment period set forth in paragraph II.C of the judgment as May 1984 through August 1985, and the spouse retroactive period set forth in paragraph II.B.2 as April 1, 1979 through April 30, 1984, these parameters limited the eligibility for Miller II underpayments to nonspouse providers.

## Section 50-018.492

### Specific Purpose:

This section stipulates that Miller II nonspouse provider and applicant/recipient claims will be eligible for underpayments only if their eligibility for retroactive payments extends through the end of the retroactive payment claim period, April 30, 1984. Those whose eligibility does not extend through the end of the retroactive payment claim period shall have their claim for underpayments denied. Also, Handbook Section 50-018.492(b) was added to clarify why this policy was adopted.

### Factual Basis:

This provision complies with paragraph II.C of the judgment, which sets the date for underpayments from May 1, 1984 through August 1985, as well as requires underpayments to be issued in accordance with Manual of Policies and Procedures (MPP) Section 30-768.4. SDSS has determined that while eligibility for Miller II underpayments result from IHSS cases or Miller I cases carried through the effective date of the corrected housemate regulation, MP 30-763.6, May 1, 1984, those that had continuing cases were presumably not corrected, while those with new or intermittent cases were processed using the new regulations. Also, Handbook Section 50-018.492(b) was added to clarify why this policy was adopted.

## Section 50-018.51

### Specific Purpose:

This section and its subsections specifies how the Miller II Retroactive Eligibility Determination Worksheet, developed by SDSS, is to be used in processing each claim, and describes some preliminary steps to be taken on all claim applications. These preliminary steps include basic information regarding the claimant's name and address, as well as his/her eligibility for class membership, and whether or not he/she applied for or was denied IHSS.

### Factual Basis:

This regulation is needed to provide a standard means of CWD documentation and determinations of eligibility for retroactive payments on Miller II claims, as well as to comply with paragraph V.C.10 of the court judgment which specifies that SDSS must develop an eligibility worksheet for use by CWDs to facilitate the eligibility determinations required to process a claim. The worksheet was approved by the court, although Sections 50-018.512, .513, and .514 have been added, at the request of CWDs, for the sake of consistency and to outline preliminary steps, including a determination of the claimant's Miller II class membership to be made for every claim application.

#### Section 50-018.521

##### Specific Purpose:

This section and its subsections specify the action to be taken by the CWD when the case record is available and the information in the case record indicates that the person claimed to have received protective supervision was also receiving/authorized IHSS during the months claimed. Subsections 50-018.521 and .521(a) instruct the CWD to determine whether protective supervision was denied solely because of the housemate and the action to be taken when the housemate was not the sole reason for denial during the period claimed.

##### Factual Basis:

This regulation is needed to comply with paragraph II.B of the court judgment which specifies that class members are entitled to restoration of all IHSS compensation for protective supervision services provided that were denied solely pursuant to SDSS' enforcement of the housemate regulations. This regulation is needed to provide a basis for the denial of those claims in which the person who was denied protective supervision during the months claimed was denied the service for a reason other than the housemate rule.

#### Section 50-018.522

##### Specific Purpose:

This section specifies the action to be taken when the CWD has determined that information outside the case record indicates that protective supervision was denied during the month(s) claimed for a reason other than the housemate rule. This section also provides examples of information that may be found "outside the case record."

##### Factual Basis:

This regulation is needed to permit the CWD to use information which may exist outside the case record when determining eligibility. Paragraph V.C.7.c of the court judgment provides for the county's authority to use such information.

#### Section 50-018.523

##### Specific Purpose:

This section and its subsections specify that the county is to review the case file to determine which month(s) if any, the IHSS recipient was receiving the IHSS statutory maximum payment. This section also provides a basis for the denial of those months claimed when the IHSS recipient was receiving the statutory maximum payment.

Factual Basis:

This section is needed to provide a basis for denials of those months claimed in which the IHSS case was at the statutory maximum. This section is needed to comply with paragraph V.B.3 of the court judgment which stipulates that one of the conditions for retroactive eligibility is that the IHSS recipient or applicant received less than the statutory maximum payment during the month(s) claimed.

Section 50-018.524

Specific Purpose:

This section instructs the CWD to determine the relationship between the claimed provider and recipient as a friend, relative, or spouse.

Factual Basis:

The CWD needs to know the relationship of the claimed recipient and provider because the retroactive payment periods applicable in Miller II differ depending on whether the claimed provider and recipient are friend or relative housemates, or a spouse, per paragraph II.B.1 and 2 of the judgment. Additionally, eligibility for underpayments are also dependent upon this distinction, as put forth by SDSS in Section 50-018.491(a).

Section 50-018.525

Specific Purpose:

This section instructs the CWD to ascertain from the case record, and document on the worksheet, the claimed recipient's impairment level at either severely impaired (SI), or nonseverely impaired (NSI).

Factual Basis:

This information is necessary to calculate the retroactive payments and/or underpayments if the claimant is found eligible for such.

Section 50-018.53

Specific Purpose:

This section provides the CWD with a cross-reference to Sections 50-018.521 and .522 for the determination of eligibility for those claims in which the case record verifies that the person claimed to have received protective supervision was denied IHSS during the period claimed.

Factual Basis:

This section is needed to provide continuity in the method in which eligibility is determined for both those cases in which IHSS was authorized during the period claimed and those cases in which IHSS was denied. SDSS concluded that, since IHSS may have been denied during the period claimed

solely because of the need for protective supervision and the housemate was providing the service, the same process for determining the reason for denial of protective supervision should be applied.

#### Section 50-018.531

##### Specific Purpose:

This section specifies the action to be taken by the CWD when the case record does not clearly establish the reason for denial of IHSS during the period claimed.

##### Factual Basis:

Paragraph V.B.1 of the judgment provides that one condition of eligibility for retroactive payments is that the person who it is claimed received protective supervision met the general IHSS eligibility conditions. Paragraph V.C.4 of the judgment provides that information and verification supplied by the claimant shall be limited to that required by either the Standard or Supplemental Claim Form. SDSS concluded that the completion of the Supplemental Claim Form and a signed statement under penalty of perjury would be sufficient in determining IHSS eligibility during the period claimed.

#### Section 50-018.532

##### Specific Purpose:

This section and its subsections specify the action(s) to be taken by the CWD when the completed Supplemental Claim Form indicates that either a) the IHSS income/resource eligibility requirements would have been met during the period claimed b) would not have been met during the period claimed, or (c) if the CWD finds information that contradicts that submitted by the claimant. If the requirements would not have been met, this regulation requires the denial of the claim for the period of ineligibility only. If the requirements would have been met, this regulation cross-references Section 50-018.55 for the actual computation of payments. If the CWD finds information that contradicts that submitted by the claimant on the Supplemental Claim Form, the CWD shall send a Notice of Action for Adverse Information and allow the claimant 45 days to respond and provide additional information, if available, to support his/her claim.

##### Factual Basis:

This regulation is needed to provide the CWD with a basis for the determinations made on claims for retroactive payment when the determination is limited to the information provided on the Supplemental Claim Form (as opposed to an available case record) and to provide a basis for denial when the responses on the form indicate that the person claimed to have received protective supervision would not have met the income/resource eligibility conditions during the period claimed. SDSS also determined that the claimant should be given an opportunity to support his/her claim, in the form of a Notice of Action, if the CWD finds information that contradicts that given by the claimant.



### Section 50-018.533

#### Specific Purpose:

This section specifies the action to be taken by the CWD when eligibility for IHSS must be established by a completed Supplemental Claim Form by the claimant and the claimant fails to return the form to the CWD within the specified 45 days.

#### Factual Basis:

Paragraph V.C.b of the judgment specifies that if the Standard Claim Form has not been completely filled out, the claimant is to be sent a Notice of Action with an explanation of the information needed and that the claimant has 45 days to return the completed form to the CWD or the claim will be denied. SDSS concluded that this same requirement should be applied when the Supplemental Claim Form must be used to establish retroactive eligibility for IHSS.

### Section 50-018.54

#### Specific Purpose:

This section and its subsections set forth the process to be used in calculating the actual retroactive payments based on the claimed recipient's case file information.

#### Factual Basis:

Paragraph V.C.10 of the judgment provides SDSS with the authority to develop a worksheet for use by CWDs in determining eligibility for retroactive payments. Paragraph V.C.8 of the judgment specifies how the CWD is to compute any payments due. SDSS concluded that the judgment's specifications on how to compute payments due should be incorporated into the Retroactive Payment Eligibility Determination Worksheet. SDSS also concluded that the steps used to compute payments should be regulatory, thereby providing consistency and a basis for final determinations and denials, which could later be challenged in a state hearing.

### Section 50-018.55

#### Specific Purpose:

This section and its subsections set forth the process for calculating actual retroactive payments when the CWD has located a record of denial or when IHSS eligibility had to be established through the information provided on the Supplemental Claim Form.

#### Factual Basis:

These regulations are necessary to make specific the process to be used by the CWDs in calculating the actual retroactive payments required under paragraph V.C.8 of the court judgment and are necessary because current regulations do not address these situations.

#### Section 50-018.56

##### Specific Purpose:

This section and its subsections set forth the process for calculating actual underpayments when the CWD has determined the claimant's eligibility for retroactive payments.

##### Factual Basis:

Paragraph II.C stipulates that class members are entitled to underpayments from May 1, 1984 through August 1985. SDSS has determined and set forth in Section 50-018.49 that Miller II claimants who are nonspouse providers and recipients, and who are otherwise eligible to receive retroactive payments, may be eligible to receive underpayments. Miller II claimants who are spouse providers are precluded from receiving underpayments under Miller II, and will be referred to WRO. Also, Section 50-018.492 requires that underpayment consideration is limited to those claimants whose eligibility for retroactive payments extends through the end of the retroactive payment claim period, April 30, 1984.

As paragraph V.C.10 of the judgment provides SDSS with the authority to design a worksheet for determining retroactive payments, SDSS concluded that a similar process for determining eligibility and calculating underpayments could be developed on a separate worksheet, with the regulations incorporating instructions for completion.

#### Section 50-018.57

##### Specific Purpose:

This section sets forth the process for calculating underpayments for claims with IHSS case records, and for claims with no IHSS case record or an IHSS denial. These regulations reference Section 50-018.54 and .55 for instructions on calculating the underpayments once eligibility for underpayments has been determined.

##### Factual Basis:

See factual basis for Sections 50-018.54 and .55, as the process and authority behind the calculations for calculating underpayments is the same as for retroactive payments.

#### Section 50-018.58

##### Specific Purpose:

This section provides the CWD with a table of the IHSS statutory maximum payment levels for the entire retroactive payment and underpayment claim period.

Factual Basis:

Paragraph V.C.8 of the court judgment specifies the way in which the CWDs are to calculate actual retroactive payments due. A major factor in this determination is the statutory maximum dollar amount the recipient/applicant received, or would have been entitled to receive during the period claimed. This regulation is needed because current regulations do not address the statutory maximums for these time periods, yet the judgment requires that these amounts be applied to each eligible claim.

Section 50-018.61

Specific Purpose:

This section and its subsections provide for a waiver of the IHSS share of cost, which would normally be considered in determining the amount of benefits an IHSS applicant/recipient would be entitled to receive.

Factual Basis:

This regulation is needed to comply with paragraph V.C.8.(c) of the judgment which prohibits the consideration of any recipient share of cost when computing the amount of retroactive payments due to claimants.

Section 50-018.62

Specific Purpose:

This section and its subsections set forth the rates at which interest is to be computed and paid to eligible claimants, as well as how it is to be computed.

Factual Basis:

This regulation is needed to comply with paragraphs II.D and V.C.8.(d) of the judgment which specify that claimants are entitled to interest at the statutory rate on the amount of payments, that the period of entitlement begins on the date when payment was originally owed, if the housemate rule had not been enforced, and that the interest due ends on the last day of the month following the month in which payment under Miller II is authorized.

Sections 50-018.63 through .634

Specific Purpose:

These sections specify when the CWD is to issue a Notice of Action to the claimant and that information which is to be contained in the Notice.

Factual Basis:

These requirements are needed to comply with paragraph V.C.11 of the judgment which specifies that the CWD must issue a Notice of Action on each claim within 60 days from the date of receipt of the claim form. This paragraph of

the judgment also specifies that the Notice include a computation for the amount due each month (with and without interest), an explanation, when needed, of why no amount is due, or less than the amount claimed is due, the total amount due each year, a statement regarding withholding taxes and advice about requesting a state hearing.

Section 50-018.635

Specific Purpose:

This regulation specifies that additional information is needed on the Notice of Action when the claimant is currently an IHSS recipient.

Factual Basis:

This regulation is needed to ensure that those IHSS recipient claimants are provided with adequate notice that retroactive payment received as a result of his/her claim could adversely affect his/her eligibility for future IHSS and other aid programs/benefits.

Section 50-018.641

Specific Purpose:

This section makes specific those individuals who are eligible for a state hearing on determinations made by the CWD on Miller II claims.

Factual Basis:

This regulation is necessary to comply with paragraph V.C.12 of the judgment which provides that each claimant or authorized representative be entitled to a state hearing on any adverse action regarding Miller II retroactive payments. Under the Miller v. Woods judgment, providers may also be claimants and entitled to retroactive payments.

Sections 50-018.651 and .652

Specific Purpose:

These sections specify the CWD's responsibility to determine how any retroactive payments paid to an IHSS recipient will, or will not affect that individual's continued eligibility for IHSS and how the lump sum payment is to be treated.

Factual Basis:

These regulations are needed to ensure that the retroactive payments due recipient claimants are not treated as a resource for two months, in accordance with Welfare and Institutions Code Section 11004(k), which stipulates that corrective payments made to recipients are to be disregarded as either income or resources in both the month the corrective payment is made and in the following month. This regulation is needed to provide consistency in the manner in which CWDs determine excess resources for Miller II recipient claimants.

#### Section 50-018.711

##### Specific Purpose:

This section requires the CWDs to submit statistical reports to SDSS on Miller II claims for retroactive payments and/or underpayments, and the specific information required.

##### Factual Basis:

This regulation is needed to comply with paragraph VI.A of the judgment which requires the CWD to submit statistical reports to SDSS and specifies the information which must be contained in the reports.

#### Section 50-018.721

##### Specific Purpose:

This section requires SDSS to obtain a final report from CMIPS, by county, and lists what the report is to include.

##### Factual Basis:

This regulation is necessary to comply with paragraph VI.B of the judgment that requires SDSS to obtain a final report on the status of claims paid and the dollar amounts paid.

#### Section 50-018.73

##### Specific Purpose:

This section and its subsections contain requirements for reports that CMIPS is to compile on Miller I claims which were reopened for Miller II consideration because they were denied solely for late filing during the Miller I claim period.

##### Factual Basis:

This regulation was formulated as the result of a SDSS decision to monitor the progress of Miller I claims, which are a major factor in this second implementation of the Miller v. Woods court case.

#### Section 50-018.741

##### Specific Purpose:

This section requires SDSS to conduct a review of a random sample of claims taken from 15 counties having the largest number of claims over the eight-month claim period.

Factual Basis:

This regulation is needed to comply with paragraph VI.C, which contains requirements for the review based on the quarterly reports by county generated by CMIPS. The review shall determine whether claims were granted or denied in accordance with the Miller II regulations.

Section 50-018.751

Specific Purpose:

This section requires that CWDs cooperate with SDSS in providing any needed information regarding compliance with these regulations.

Factual Basis:

This regulation is needed to ensure that CWDs are aware of their responsibility to cooperate with SDSS in the Department's efforts to monitor CWD compliance and to specify that monitoring will include the review of whatever information SDSS deems appropriate. This regulation is intended to provide CWDs with adequate notice that SDSS' monitoring may include the review of documents other than the MILLER claim forms and the eligibility worksheets.

Section 50-018.8

Specific Purpose:

This section contains the forms by which retroactive payments and/or underpayments are claimed by potential claimants and determined either eligible or ineligible by the CWDs.

Factual Basis:

The Miller v. Woods II Poster - TEMP 2042; the Miller v. Woods II Explanatory Flyer - TEMP 2031; the Provider Standard Claim Form -TEMP 2000; the Provider Supplemental Claim Form - TEMP 2001; the Provider Retroactive Eligibility Determination Worksheet - TEMP 2003; the Provider Underpayment Eligibility Determination Worksheet - TEMP 2002; the Applicant/Recipient Standard Claim Form -TEMP 2028; the Applicant/Recipient Supplemental Claim Form - TEMP 2029; the Applicant/Recipient Retroactive Eligibility Determination Worksheet - TEMP 2027; and the Applicant/Recipient Underpayment Eligibility Determination Worksheet; have been approved by the plaintiff's attorney for use in implementing this case. These forms are needed to standardize the way in which retroactive payments are claimed and the way in which the CWDs process, document and determine eligibility for those claims.

c) Identification of Documents Upon Which Department Is Relying

Miller v. Woods amended judgment dated July 19, 1991, Case No. 472068.

d) Testimony and Response

(To be completed after public hearing.)

e) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Sections 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by court order in Miller v. Woods amended judgment.

f) Statement of Potential Cost Impact on Private Persons or Businesses and of Alternatives Considered

SDSS has determined that there will be no cost impact on private persons or businesses.

SDSS has determined that no alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected persons than the proposed action.

g) Small Business Impact Statement

SDSS has determined that there will be no adverse impact on small businesses because these regulations do not apply to any small business.

Adopt New Section 50-018 to read:

50-018 MILLER v. WOODS

50-018

HANDBOOK BEGINS HERE

.1 Background

These regulations cover the retroactive payment and underpayment relief that must be implemented again. The first phase of the implementation, called Miller I, was from February 11, 1988 to July 19, 1991. The second phase, called Miller II, began on July 19, 1991, the date of the amended judgment. Below is an overview of the case, including the major implementation changes in Miller II from Miller I.

- .11 Court of appeal decision: In October of 1983, the Court of Appeal, Fourth Appellate District, invalidated Manual of Policies and Procedures (MPP) 30-463.233c (renumber MPP 30-763.233c) in Miller v. Woods, 148 Cal.App.3d 862. It ruled that otherwise eligible In-Home Supportive Services (IHSS) recipients were eligible for protective supervision when it was provided by their housemates. It ordered the State Department of Social Services (SDSS) to grant prospective and retroactive relief to the class.
- .12 Initial county welfare department (CWD) case review: On May 1, 1984, SDSS repealed MPP 30-763.233c and adopted MPP 30-763.6, which required CWDs to review their existing IHSS cases and to start paying for protective supervision provided by housemates.
- .13 Miller I judgment: On February 11, 1988, the San Diego Superior Court approved a final judgment. SDSS was required to notify potential class members and process claims for back payments to applicants, recipients, and their providers, who had been denied them under the invalidated regulation. There were two kinds of payments: retroactive payments from April 1979 through April 1984, and underpayments from May 1984 on.
- .14 Miller I implementation: In September 1988, SDSS adopted regulations (MPP 50-018) and started implementing the judgment. Implementation problems occurred, including the failure to send individual notices to some potential class members, returned notices, delays in sending notices, and insufficient notice of the right to claim underpayments.
- .15 Miller I judgment: To correct the implementation problems in Miller I, the Superior Court ordered SDSS to notify potential class members again and process claims for back payments. On July 19, 1991, it approved a final judgment which required certain implementation changes from the first judgment.
- .16 Miller II implementation changes: The Miller II regulations are generally similar to the Miller I regulations. There are several important changes based on the implementation problems in Miller I and the court's 1991 amended judgment in Miller II:



- (a) Individual notices: SDSS should send individual notices to all providers who lived at the same address as the recipient from January 1, 1980 through November 1988, including health and community care facilities, if necessary. (MPP 50-018.211)
- (b) Updating and remailing returned individual notices: SDSS should update addresses on all individual notices returned as undeliverable until April 1, 1993, and remail any updated. The same deadline, based on the initial eight-month claiming period stipulated in MPP 50-018.22, shall apply.
- (c) Reopening late claims: SDSS should reopen and CWDs must process all claims denied solely because they were filed late and issue notices with claim forms to the claimants. (MPP 50-018.47)
- (d) Retroactive payments: All recipients and non-spouse housemate providers who filed a late claim in Miller I and were denied solely for late filing should have their claim reopened by SDSS and processed by CWDs for possible Miller II retroactive payments, for the period from April 1979 through April 1984; these individuals need not file another claim for retroactive payments under Miller II. (MPP 50-018.47) Any other recipients and non-spouse housemates who provided protective supervision for any time between April 1979 and April 1984, and did not file a Miller I claim, are eligible to file a claim for retroactive payments in Miller II. (MPP 50-018.411 and .412) Spouse recipients and providers may file a claim for the limited period from April 1979 to July 1981 in Miller II (MPP 50-018.331), and any claim after July 1981 will be denied under Miller v. Woods and referred to the Welfare Rights Organization (WRO) v. McMahon case. (MPP 50-018.491(a))
- (e) Underpayments: All non-spouse recipients and providers are eligible to file a claim for underpayments for the period from May 1984 through August 1985. (MPP 50-018.332, .413, and .49) Spouse recipients and providers may not file an underpayment claim in Miller II, and any claim for underpayments will be denied under Miller v. Woods and referred to the WRO v. McMahon case. (MPP 50-018.491(a))
- (f) Eight-month claim period: The claim period in Miller II should be eight months from the beginning of the mailing of individual notices with the last day to file claims September 30, 1993. This date shall apply to remailings as well. (MPP 50-018.22)
- (g) Adverse information notices: CWDs may not deny claims solely because case records or other information contradicts information provided by the claimant on the Standard Claim Form or Supplemental Claim Form. They should send a "Notice of Action for Adverse Information", with a copy of relevant information from the case record or other source attached, and give the claimant 45 days to provide additional information. (MPP 50-018.446, 50-018.463, 50-018.521(a), .522(a), .523(a), and 50-018.633)

- (h) Forms: The forms have been changed to reflect the modifications required to implement Miller II, including the use of separate sets of the Standard Claim Form and Supplemental Claim Form for provider claimants and recipient claimants.
- (1) Use of Supplemental Claim Form: The CWDs should issue a Supplemental Claim Form to the claimant whenever the CWD is unable to locate either a previously approved IHSS case record or a record of denial. The information from the Supplemental Claim Form, completed as instructed by the county, will be used to examine the claimant's contention that the claimed recipient applied for and/or was denied IHSS during the retroactive claim period, as well as to determine the claimed recipient's income and resource eligibility for IHSS during the period claimed. (MPP 50-018.44 and .452)
- (2) If a Miller II claimant is sent a Notice of Action requesting the completion of either the Standard Claim Form or the Supplemental Claim Form, the claimant should have 45 days from the date of the Notice of Action to complete and mail the postmarked document to the CWD. (MPP 50-018.315 and .432)
- (i) Notice of Action: For each claim received, the CWD should issue a final Notice of Action for retroactive payments and/or underpayments, which is to contain information specified in MPP 50-018.631(a) through (h).
- (j) Monthly CMIPS reports: CMIPS should provide monthly reports on the status of each Miller I claim reopened as a result of being denied due to receipt by the CWD after the end of the Miller I claim period. The reports should contain information specified in MPP 50-018.73.
- (k) Related implementation of WRO v. McMahon: CWDs should be implementing relief in WRO v. McMahon at the same time as Miller II. WRO grants spouse recipients and providers back payments for protective supervision and transportation: retroactive payments from July 1, 1983 through September 10, 1984 and underpayments from October 1, 1984 through September 30, 1985. CWDs should treat some Miller II claims for payments under WRO when they extend beyond Miller II claim period for spouses. CWDs should insert a WRO claim form to accompany the Notice of Action for those who are not eligible to receive retroactive payments and/or who apply for underpayments under Miller II, because they are spouse providers. (MPP 50-018.491)

HANDBOOK ENDS HERE

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Section 50-018.2 to read:

.2 Notification of Potential Claimants

.21 In order to notify potential claimants, the Department shall:

.211 Send an Explanatory Flyer in English and Spanish, and a Provider Standard Claim Form in English with instructions how to obtain the Spanish version, to all past and present IHSS providers contained on the IHSS Payroll System, from January 1, 1980 to November 30, 1988, who at any time during this period lived at the same address as the recipient. The Department will utilize the services of the Franchise Tax Board and Department of General Services to determine and mail to the most current mailing address available for providers identified in this manner.

.212 Provide each CWD with sufficient quantities of Standard Claim Forms, Supplemental Claim Forms, Explanatory Flyers, and 17" x 22" posters modeled after the Explanatory Flyers in both English and Spanish.

(a) For Miller II, there shall be a Provider Standard Claim Form, an Applicant/Recipient Standard Claim Form, a Provider Supplemental Claim Form, and an Applicant/Recipient Supplemental Claim Form.

(b) In Section 50-018 the terms "Standard Claim Form" and "Supplemental Claim Form" shall apply to both the provider and the applicant/recipient versions of these forms, unless otherwise noted.

(c) In terms of notifying potential claimants as contained in Section 50-018.211, the claim form mailed to providers shall be the Provider Standard Claim Form.

.213 Provide those interested organizations and groups listed in Appendix A-1 through A-9 of the final judgment referred to in Section 50-018.11 with copies of the Standard Claim Forms, the Explanatory Flyers, and the posters, with a request to display the posters in a prominent location and to distribute the Explanatory Flyers and Standard Claim Forms on request throughout the claim period.

.214 Provide the Federal Social Security Administration offices in California with copies of the posters, in English and Spanish, and request the agency to display the posters throughout the claim period in prominent locations where there is public access.

.22 The claim period identified in this section shall be the eight-month period from February 1, 1993 through September 30, 1993.

- .23 In order to notify potential claimants, the CWDs shall:
- .231 Place throughout the claim period the posters described in Section 50-018.212 in a prominent location in each local office having contact with the public.
- .232 Provide the Explanatory Flyer and Standard Claim Form to any person inquiring about eligibility for retroactive payments and/or underpayments for MILLER v. WOODS.
- .24 SDSS shall reopen specific Miller I cases from the first implementation that were denied solely for the reason that the claim was received after the end of the claim period. These reopened cases will be processed by CWDs as Miller II applications. A determination will be made pursuant to Section 50-018 as to the claimant's eligibility for both retroactive payments and underpayments. Reporting requirements for these reopened cases are contained in Section 50-018.73.
- .241 The time period for reopened Miller I cases denied because the claim was received after the end of the Miller I claim period extends from March 10, 1989 through September 30, 1993.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Section 50-018.3 to read:

.3 Application for Retroactive Payments and Underpayments

.31 Claimant Responsibilities

.311 The claimant shall cooperate in obtaining all information necessary to process the claim. Failure to provide the needed information shall result in the denial of the claim or of that portion of the claim for which the information is necessary.

.312 All claims for retroactive payments and underpayments shall be filed on a Miller v. Woods claim form with the CWD in which the claimant currently resides.

.313 The claimant shall complete the claim form, sign the form under penalty of perjury, obtain the signature of a witness under penalty of perjury and mail or deliver the completed claim form to the CWD.

.314 The claim form shall be completed as stipulated in Sections 50-018.431 and .443, and hand-delivered or mailed to the CWD and postmarked by September 30, 1993. Claims hand-delivered or mailed and postmarked after this date shall be denied.

.315 If the claimant is sent a Notice of Action requesting the completion of either the Standard Claim Form or the Supplemental Claim Form, the claimant shall have 45 days from the date of the Notice of Action to complete and hand-deliver or mail the document to the CWD. Whenever the claimant must return a document or documents to the CWD within 45 days, the following shall apply:

(a) If mailed, the document(s) shall be postmarked by the last day of the 45-day period.

(b) If hand-delivered, the document(s) shall be delivered to the CWD no later than the close of business on the last day of the 45-day period.

(c) If required document(s) is not hand-delivered or mailed and postmarked within the time limits stated in Section 50-018.315, denial of the claim, or that portion of the claim for which the information is needed, shall result.

.316 Unless otherwise specified, all references to "days" in regard to time limits shall be construed as "calendar" days.

.32 CWD Responsibilities - Filing Date/Time Limits

- (a) The CWD shall date stamp the claim form when received. The CWD shall retain all claim forms and envelopes of any claims received for the Miller v. Woods lawsuit.
- (b) The date of filing shall be the date postmarked on the envelope.
- (c) If the claim is filed in person at the CWD, the date of filing shall be the date received in the CWD office, and the date stamped on the claim.
- (d) If the filing date cannot be determined pursuant to Section 50-018.32(b) or (c), the filing date shall be the date the claim was signed.
- (e) If the claim must be forwarded to another county for processing because the services were either provided or received in the second county, the first county's filing date shall apply.
- (f) If the date of filing on the Standard Claim Form is after September 30, 1993, the claim shall be denied.
- (g) If a Supplemental Claim Form, as described in Section 50-018.441, must be sent to the claimant, the filing date shall not change. The filing date shall remain the same as that date which was determined in accordance with Sections 50-018.32, (b), (c), or (d).
- (h) If the CWD receiving the claim determines that services were received or provided while the recipient/applicant lived in another county for all or part of the claim period, the CWD shall:
  - (1) Send a copy of the claim to each affected county. The CWD shall also send a Notice of Action to the claimant within 10 calendar days of the filing date explaining that the correct CWD shall process the claim for the period of time in which the services were provided/received in the other county.
  - (2) As noted in Section 50-018.32(e), the filing date for the claim shall be that date which is determined by the first receiving CWD.
- (i) If the claim is a reopened Miller I claim to be processed for consideration of retroactive payments, the filing date shall be the date the claim was originally filed under Miller I. The filing date for a claim for underpayments shall be the date determined by the postmark on the returned claim for underpayments, or as otherwise stipulated in Section 50-018.32.

- (j) The CWD shall determine eligibility/ineligibility and compute the retroactive payments and underpayments due within 45 days of the filing date. The CWD shall input this information into the Case Management, Information and Payrolling System (CMIPS) so that interest can be computed on approved cases and the computation returned to the CWD.
- (1) The CMIPS shall compute the total retroactive payment and/or underpayment amount due, with and without interest, and return the computation on a form developed by SDSS to the appropriate CWD within five working days from the date of CWD input.
- (k) Within 10 working days of receiving the computation from CMIPS, the CWD shall issue a Notice of Action to the claimant which contains the information specified in Section 50-018.631, and, if applicable, Sections 50-018.634 and .635. If approved, payment is authorized the same day as the Notice of Action is authorized.
- (l) CWDs receiving claims forwarded from another county shall process the claim, determine eligibility, compute retroactive payments and/or underpayments, compute interest, issue the necessary Notice of Action, and input the necessary information into CMIPS within 45 days of receipt from the original county.
- (m) Time limits for CWDs specified in Section 50-018.32 may be exceeded in situations where completion of the specified tasks is delayed due to circumstances beyond control of the CWD. In these instances, the reason(s) for the delay(s) shall be documented in the affected claimant's case file.
- (n) Unless otherwise specified, all references to "days" for these time limits shall be construed as "calendar" days.

.33 Retroactive Payment and Underpayment Time Periods

- .331 Eligibility for retroactive payments shall be limited to the following periods:
- (a) April 1, 1979 through April 30, 1984 for claims in which the housemate was a nonspouse provider; and,
- (b) April 1, 1979 through July 31, 1981 for claims in which the housemate was a spouse provider.
- .332 Claims in which the period claimed is beyond the retroactive time period specified in Section 50-018.331(a) shall be processed as underpayments only for the period May 1, 1984 through August 31, 1985.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Sections 50-018.41, .42, .43, .44, and .45 to read:

.4 Claim Processing

.41 Conditions for Class Membership

.411 IHSS housemate provider claimants may be eligible to receive retroactive payments and/or underpayments in Miller II. Housemate provider claimants who are potentially eligible to receive retroactive payments and/or underpayments are persons who:

- (a) Lived with an individual meeting the conditions of Sections 50-018.413(a), (b), (c), and (d) and provided protective supervision to that individual during the applicable retroactive payment and/or underpayment period specified in Section 50-018.33; and,
- (b) Were not compensated for providing protective supervision services for the month(s) claimed.

.412 Spouse provider claimants may be eligible to receive retroactive payments only and are not entitled to underpayments in Miller II. Spouse provider claimants who are potentially eligible to receive retroactive payments are persons who:

- (a) Were legally married to an individual meeting all applicable conditions stated in Section 50-018.413, and provided protective supervision to that individual during the applicable retroactive payment period specified in Section 50-018.331(b); or,
- (b) Were considered to be a member of a married couple as defined for the purposes of SSI/SSP eligibility in 20 CFR 416.1806, lived with an individual meeting all applicable conditions stated in Section 50-018.413, and provided protective supervision services during the applicable retroactive payment and/or underpayment period specified in Section 50-018.331(b); and
- (c) Were not compensated for providing protective supervision services for the month(s) claimed.

.413 IHSS recipient/applicant claimants potentially eligible to receive retroactive payments and/or underpayments are persons who:

- (a) Were California residents, aged, blind, or disabled during the applicable retroactive and/or underpayment period specified in Section 50-018.33 and met the eligibility conditions of MPP 30-755; and,



- (b) Were nonself-directing, confused, mentally impaired, or mentally ill, and may have been hurt or injured if left alone, thus meeting the general conditions for requiring the service of protective supervision; and,
- (c) Paid the housemate provider during the applicable retroactive payment and/or underpayment period for the service of protective supervision, and either,
- (d) Received IHSS benefits, but were denied protective supervision services during the applicable retroactive payment and/or underpayment period solely because the provider was a housemate or a spouse, and the amount of benefits was less than the severely impaired or nonseverely impaired maximum, as applicable at the time; or,
- (e) Applied for IHSS services during the applicable retroactive payment and/or underpayment period and were denied protective supervision solely because the provider was a housemate or a spouse.

.42 Review of Class Membership Questions

.421 The CWD shall review the responses to the class membership qualifying questions in Part I, Section 2 of the Provider Standard Claim Form.

- (a) If the claimant answered "no" to questions 2A, 2B, 2C, or 2D, the CWD shall issue a Notice of Action denying the claim. The notice shall explain that the claimant is not a Miller v. Woods class member.
- (b) If the claimant answered "yes" to questions 2A, 2B, 2C, and 2D but answered "no" to both questions in 2F, that is, the person whom the claimant stated received protective supervision neither received nor was denied IHSS benefits, the CWD shall deny the claim and issue a Notice of Action. The notice shall explain that the claimant is not a Miller v. Woods class member because he/she did not prove the claimed recipient applied for or was denied IHSS during the claimed retroactive or underpayment period.
- (c) If the claimant answered "yes" to 2A, 2B, 2C, 2D, 2E, or 2F and the CWD has information available which contradicts the claimant's contention of class membership, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of Notice of Action to provide additional information if available.

- (d) If the claimant answered "unknown" to either part of question 2F, the CWD shall issue a Notice of Action and a Miller v. Woods Provider Supplemental Claim Form to the claimant. The claimant shall have 45 days from the date of the Notice of Action to complete the form and return it to the CWD.

.43 Review of Information Contained on the Standard Claim Form

.431 The CWD shall review each Standard Claim Form submitted to determine if the claimant has provided the information necessary to further process the claim. For the purposes of this determination, a claim shall be considered complete when all the following requirements are met:

- (a) The following information requested in Part I, Section 1 is provided: name, social security number, and current address.
- (b) All qualifying questions in Part I, Section 2 are answered.
- (c) Part I, Section 3 is completed, if applicable.
- (d) Part I, Section 4 is completed in its entirety, including: name of person who needed protective supervision; his/her current or last known address, and his/her relationship to the provider.
- (e) Part I, Section 5, of the Standard Claim Form is signed by the claimant and dated.
- (f) Part I, Section 6, of the Standard Claim Form is signed and dated.
- (g) The information requested in Part II and Part III is provided, as applicable.

.432 If the CWD determines that Part I of the Standard Claim Form has not been completely filled out as specified in Section 50-018.431, the CWD shall send the claimant a Notice of Action specifying that portion of the form which is in need of completion. The Notice of Action shall also state that the claimant has 45 days from the date of the Notice of Action to submit the completed form to the CWD. If the completed form is not returned to the CWD within the 45 days, the claim shall be denied, and a denial Notice of Action (NOA) shall be mailed to the claimant.

.433 Upon receipt of the information requested in Section 50-018.432, the CWD shall review the resubmitted information to determine if the claim is now complete in accordance with the criteria in Section 50-018.431. If complete, the CWD shall continue processing the claim.

(a) If the claim is still not complete because the claimant did not provide all the requested information, the CWD shall deny the claim.

.434 Failure on the part of the claimant to respond within the 45-day period shall result in denial of the claim.

.44 Supplemental Claim Form

.441 The CWD shall issue a Supplemental Claim Form to the claimant whenever the CWD is unable to locate either a previously approved IHSS case record or a record of denial of IHSS eligibility. The purpose of the Supplemental Claim Form shall be to: (1) request information from the claimant regarding the claimed recipient's applying for and being denied IHSS during the retroactive payment period; and (2) determine whether the person claimed to have received protective supervision services met or would have met the income/resource eligibility requirements for IHSS services during the period claimed. The CWD shall include a Notice of Action with the Supplemental Claim Form stating that completion of the form is necessary in order to further determine eligibility for retroactive payments and underpayments and that the claimant must return the completed form to the CWD within 45 days.

(a) If the CWD has no case record of an IHSS application and denial for the claimed recipient during the retroactive payment period(s) being claimed, the Notice of Action accompanying the Supplemental Claim Form shall request the claimant to complete all parts of the Supplemental Claim Form, based on the criteria in Section 50-018.443.

(b) If the CWD has a case record showing the claimed recipient had applied for and was denied IHSS for the retroactive payment period(s) being claimed, but the CWD cannot determine from the case record whether the claimed recipient met IHSS income/resource eligibility criteria, the Notice of Action accompanying the Supplemental Claim Form shall request the claimant to complete Parts I, III, and IV of the Supplemental Claim Form, relating to income/resource eligibility for IHSS, based on the criteria in Section 50-018.443.

(c) If the CWD has lost or destroyed its records or did not maintain adequate records during the claimed period, the CWD shall send the Supplemental Claim Form requesting completion of all parts of the form based on the criteria in Section 50-018.443.

.442 Upon receipt the CWD shall date stamp the submitted Supplemental Claim Form following the provisions of Section 50-018.32(a).

.443 The CWD shall review the submitted Supplemental Claim Form to ensure that all required questions are answered, all required information is provided, and that the form is signed and dated by both the claimant and by a verifying witness. For the purposes of this determination, the Supplemental Claim Form shall be considered complete when the required sections specified in Section 50-018.441 are completed and:

- (a) The following information requested in Part I, Section 1 is provided: name and address of the person for whom it is claimed provided/received protective supervision services during the months claimed.
- (b) For the Provider Supplemental Claim Form, Part I, Section 2, the name and current or last known address of the person for whom it is claimed received protective supervision services during the months claimed, is completed.
- (c) If Part II is applicable, Sections 1 and 2 requesting information and documentation related to an IHSS application and/or denial for the person for whom it is claimed received protective supervision services during the months claimed, is completed.
- (d) Part III, Sections 1, 2, and 3 relating to the (1) receipt of Supplemental Security Income/State Supplemental Program (SSI/SSP) benefits; (2) average gross monthly income from all sources; and (3) the amount of average monthly liquid resources in excess of \$1500 for a single person, and \$2250 for a married person, are provided for the claimed recipient during the years for which hours are claimed.
- (e) Part IV of the Provider or Recipient Supplemental Claim Form is signed and dated by the claimant.
- (f) Part IV, Section 2 of the Provider or Recipient Supplemental Claim Form is signed by a verifying witness, and dated, with his/her address and relationship to claimant completed.
- (g) Part IV, Section 3 of the Applicant/Recipient Supplemental Claim Form is signed by the person completing the claim form, with address and relationship to the applicant/recipient completed.

.444 If the CWD determines that the Supplemental Claim Form is incomplete based on the criteria in Section 50-018.443, the CWD shall send a Notice of Action requesting the missing information and attach to the Notice a copy of the original Supplemental Claim Form submitted. The Notice of Action shall specify the section number of the form which is in need of completion and shall state that the claimant has 45 days from the date of the Notice of Action to submit the completed form or the claim will be denied.

(a) Upon receipt of the information requested in Section 50-018.444, the CWD shall review the submitted information to determine whether the Supplemental Claim Form is now complete in accordance with Section 50-018.443. If complete, the CWD shall continue processing the claim. If the Supplemental Claim Form is still not complete, the CWD shall deny the claim.

.445 If the completed Supplemental Claim Form is not received from the claimant within the 45-day limit, the CWD shall deny the claim in accordance with Section 50-018.314.

.446 Information submitted by the claimant on the Supplemental Claim Form shall be presumed to be true as long as the form has been signed and dated by both the claimant and a witness, unless the CWD has information which contradicts information supplied by the claimant. If the CWD has such information available and the CWD determines that information indicates the claimed recipient of protective supervision services would not have been eligible for IHSS, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068 and 20 CFR 416.1806.

Adopt New Section 50-018.45 to read:

.45 Existing Case File and Information Requirement

- .451 The CWD shall determine if there is an existing case file with which to match claim information for determining eligibility.
- .452 In accordance with Section 50-018.44, if the CWD cannot locate a case file for the IHSS recipient/applicant for whom it is claimed protective supervision services were provided without IHSS compensation, or if the CWD cannot determine eligibility from the existing case file for the months claimed, the CWD shall send a Supplemental Claim Form to the claimant.
- .453 All information received and/or obtained in relation to the Miller v. Woods court case, and all forms generated as a result of the court case, shall be retained by the CWD in a Miller case file. These documents shall include, but not be limited to:
- (a) Completed Standard Claim Form and any subsequent resubmittals;
  - (b) Completed Supplemental Claim Form, if applicable, and any subsequent resubmittals and any documents submitted by the claimant in responding to the Supplemental Claim Form;
  - (c) Completed Eligibility Determination Worksheets, including documentation of retroactive payments and prejudgment interest calculations as well as underpayment calculations;
  - (d) A copy of any Notices of Action sent to the claimant;
  - (e) A copy of any correspondence with other CWDs in relation to the claim;
  - (f) All CMIPS documents; and,
  - (g) A copy of all other documents used in the determination of eligibility and computation of payments.
- .454 The CWD shall not require the claimant to provide information other than that requested on the Standard Claim Form and, if needed, Supplemental Claim Form. However, the claimant shall be offered an opportunity, in the form of a Notice of Action for Adverse Information, to submit additional information that might rebut a possible denial based on CWD records. The CWD shall consider any additional information submitted by the claimant to support his/her claim.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Section 50-018.46 to read:

.46 Presumptive Need For and Provision of Protective Supervision

.461 If other information available to the CWD including, but not limited to, previous or current IHSS casefiles, does not rebut the presumption of need for protective supervision, the person claiming to have needed protective supervision is presumed to have needed protective supervision for the months claimed during the applicable retroactive payment and/or underpayment period if:

- (a) A need for protective supervision was assessed at any time, in which case the need shall be from that time forward; or,
- (b) The needed protective supervision is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness contained on the Standard Claim Form. The CWD shall consider any other documentation submitted by the claimant to support the presumption of need for protective supervision.

.462 The person claiming to have needed protective supervision is presumed to have received protective supervision services for the months claimed during the applicable retroactive payment and underpayment periods if the delivery of such services is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness, contained on the Standard Claim Form, and other information available to the CWD, including, but not limited to, previous or current IHSS casefiles, does not rebut the presumption of delivery of protective supervision services.

- (a) The CWD shall presume that any protective supervision services provided and claimed were not provided voluntarily.

.463 If information available to the CWD rebuts the presumption of either the need for or the delivery of protective supervision services during any of the months claimed during the applicable retroactive payment and underpayment period, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

.464 If the CWD IHSS recordkeeping system shows no record of the claimed recipient ever applying for or being denied IHSS for the period being claimed, the CWD shall issue a Notice of Action requesting the claimant to complete an attached Supplemental Claim Form in accordance with Section 50-018.44. The claimant shall have 45 days from the date of the Notice of Action to submit the completed Supplemental Claim Form.

- (a) If the claimant does not submit the Supplemental Claim Form within the 45-day period, the claim shall be denied.
- (b) If the claimant submits the Supplemental Claim Form, and it is complete based on the criteria in Section 50-018.443, the CWD shall proceed to Section 50-018.532.
- (c) If the submitted Supplemental Claim Form is incomplete based on the criteria in Section 50-018.443, the CWD shall follow instructions in Section 50-018.444(a).
- (d) If the CWD determines that information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall continue to process the claim to determine eligibility for payments.
- (e) If the CWD determines that the information supplied by the claimant does not verify that the claimed recipient did apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall issue a denial Notice of Action.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.



Adopt New Sections 50-018.47 and .48 to read:

.47 Miller I Reopened Cases Denied For Late Filing

.471 Only those Miller I claims specified in Section 50-018.24 that were denied because the claim was received after the end of the Miller I claim period shall be reopened and reconsidered for retroactive payments and prejudgment interest during the Miller II claim period.

.472 The Miller I claimants whose claims shall be reopened during Miller II, those claims which were denied solely for the reason of late filing, shall be sent a Notice of Action prior to the beginning of the Miller II claim period. The Notice of Action shall state the reason for the reopening and shall request the claimant to complete an attached Miller II Standard Claim Form only if the claimant desires to make a claim for underpayments.

(a) The claimant shall be requested to complete and return the Miller II Standard Claim Form if he/she wishes to make a claim for underpayments.

(b) The CWD shall begin processing the reopened Miller I claims immediately upon notification that the claim has been reopened.

(c) If the Miller I claimant whose case has been reopened makes a claim for underpayments, such claim shall be processed in accordance with Section 50-018.4.

.48 With the exception of Section 50-018.47, claimants filing in Miller II who had previously filed Miller I claims shall have their Miller II claim processed for underpayments only, where underpayments exist.

.481 A Miller I claim shall be one that was received during the Miller I claim period, September 9, 1988 through March 9, 1989. Regulations in effect for Miller I required each claim to receive a retroactive payment eligibility determination resulting in either an approval, a denial, or a partial approval/denial. In addition, the final decision of each Miller I claim had to be documented by a Notice of Action to the claimant stating the decision and notifying the claimant of the right to a state hearing.

.482 No Miller I claim for the retroactive claim period may be reopened or reconsidered except as specified in Section 50-018.47.

.483 Except as specified in Section 50-018.47, Miller I claimants who make a claim in Miller II for retroactive payments and prejudgment interest shall have their claim for such payments denied.

.484 Miller I claimants making a claim under the provisions of Miller II for underpayments shall receive an eligibility determination for underpayments.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Section 50-018.49 to read:

.49 Eligibility for Underpayments

.491 Miller II spouse providers shall not be eligible for underpayments. Spouse provider eligibility for Miller II retroactive payments extends only through July 31, 1981.

(a) Spouse providers making a claim for underpayments in Miller II shall have their underpayment claim denied, with a Notice of Action stating the reason for the denial. Such providers may be eligible for retroactive payments or underpayments under Welfare Rights Organization (WRO) v. McMahon, and will receive a WRO Standard Claim Form with their Miller II denial NOA.

.492 Miller II nonspouse provider and applicant/recipient claims shall be eligible for underpayment consideration only if their eligibility for Miller II retroactive payments extended through the end of the retroactive payment claim period, April 30, 1984.

(a) Nonspouse providers and applicant/recipient claimants shall have their Miller II claim for underpayments denied if their eligibility for retroactive payments does not extend through the end of the Miller II retroactive payment claim period, April 30, 1984. Their Miller II claim for underpayments shall be denied with a Notice of Action stating the reason for the denial.

HANDBOOK BEGINS HERE

(b) Eligibility for underpayments in Miller II results from IHSS cases or Miller II cases carried through the effective date of the corrected housemate regulations, MPP 30-763.6, effective May 1, 1984. Potentially eligible cases are those that were not corrected as of the effective date of the revised regulations. Claims for underpayments in which there was not an active case requiring updating to reflect the housemate regulations shall be denied, with the exception of approved Miller II claimants whose eligibility extends through the end of the retroactive claim period.

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Sections 50-018.51, .52, .53, .54, .55, .56, and .57 to read:

.5 Use of County Worksheet to Document Findings and Calculate Payments Due

.51 The CWD shall use the Miller v. Woods Retroactive Payment Eligibility Determination Worksheets to document all determinations made on each claim submitted. Information from the Standard Claim Form, and the Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.

.511 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, if available, at the top of Part I of the worksheet.

.512 The CWD shall determine the claimed recipient's eligibility for class membership by reviewing the claimant's response on Part I, Section 2 of the Standard Claim Form, and shall document these findings on step #1 of the worksheet.

(a) If the claimant answered "yes" to questions 2A, 2B, 2C, and 2D, of the Standard Claim Form, the CWD shall proceed to step #2 of the worksheet.

(b) If the claimant answered "no" to any of the above questions, the CWD shall issue a denial Notice of Action explaining that the claimed recipient is not a Miller II class member.

.513 The CWD shall determine if the claimed recipient applied for or was denied IHSS during the retroactive claim period, by reviewing the claimant's response on Part I, Section 2, question 2F, of the Standard Claim Form, and shall document this finding on step #2 of the worksheet.

(a) If the claimant answered "yes" to the first part of question 2F of the Standard Claim Form, the CWD shall proceed to step #3 of the worksheet.

(b) If the claimant answered "no" to the first part of question 2F of the Standard Claim Form, the CWD shall issue a denial Notice of Action.

(c) If the claimant answered "unknown" to either part of question 2F of the Standard Claim Form, the CWD shall send a Supplemental Claim Form to the claimant.

.514 The CWD shall determine if there is any record of an IHSS approval or denial, and shall document this finding on step #3 of the worksheet.

- (a) If there is a record of approval or denial the CWD shall:
  - (1) proceed to step #4 of the worksheet if there is a record of approval for IHSS.
  - (2) proceed to step #9 of the worksheet if there is a record of denial for IHSS.
- (b) If there is no IHSS case record, the CWD shall send the claimant a Supplemental Claim Form.

.52 In determining eligibility for those claims in which the CWD has verified by case record that the claimed recipient of protective supervision services was authorized IHSS during the month(s) claimed, the CWD shall do the following, using the Retroactive Payment Eligibility Determination Worksheet, Part I, steps #4 through #8:

.521 Determine whether the case record indicates that protective supervision services were denied during the month(s) claimed for a reason other than because a spouse/housemate was providing the service, and check the appropriate response on step #4 of the worksheet.

- (a) If, for any month(s) claimed, the case record indicates that the denial was based on a reason other than the provision of protective supervision by the spouse/housemate, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the information which indicates the reason for denial of protective supervision. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available. The CWD shall process the claim for any remaining month(s) of eligibility, pending receipt of a response from the claimant.

.522 Determine whether any information exists outside the case record which indicates that protective supervision services were denied during the month(s) claimed for any reason other than the provision of protective supervision by the spouse/housemate, and check the appropriate response on step #5 of the worksheet. Information outside the case record may consist of, but not be limited to, the CWD's knowledge of the IHSS recipient's placement in a state hospital or other type of out-of-home care during the month(s) claimed.

- (a) If, for any month(s) claimed, information exists outside the case record, as described in Section 50-018.522, the CWD shall document the reason in the space provided on the worksheet, issue a Notice of Action for Adverse Information, and attach a copy of the information, which indicates the reason for denial of protective supervision. The claimant shall have 45 days from the date of the Notice of Action to provide additional information, if available.

The CWD shall process the claim for any remaining month(s) of eligibility, pending the receipt of a response from the claimant.

.523 Determine from the case record whether the IHSS recipient was authorized the statutory maximum payment, as described in Section 50-018.58, during any eligible month(s) claimed. Check the appropriate response on step #6 of the worksheet.

(a) For any eligible month(s) claimed in which the IHSS recipient was authorized the statutory maximum payment, the CWD shall issue a Notice of Action of Adverse Information and attach a copy of the relevant information from the case record. The claimant shall have 45 days from the date of the Notice of Action to provide additional information regarding their level of authorized hours, if available.

(b) The CWD shall proceed to Section 50-018.54 and determine if there are any remaining month(s) in which the case was not authorized the statutory maximum.

.524 Determine from the case record or Part I, Section 4 of the Standard Claim Form, the relationship between the claimed provider and recipient. Check the appropriate response on step #7 of the worksheet.

.525 Determine from the case record whether the claimed IHSS recipient was severely impaired (SI) or nonseverely impaired (NSI) and check the appropriate response on step #8 of the worksheet.

.53 In determining eligibility for those claims in which the claimed recipient of protective supervision was denied IHSS during the month(s) claimed, the CWD shall complete step #9 of the Retroactive Payment Eligibility Determination Worksheet, locate the record of denial, and follow the procedures in Sections 50-018.521 and .522. The CWD shall proceed to Section 50-018.55 for instructions to complete the calculation of net payments on Miller II claims in which an IHSS case had been denied and the Miller II claimant is determined eligible for payments.

.531 If the CWD is unable to determine from the record the reason for denial of IHSS during either the entire or partial period claimed, the CWD shall issue a Notice of Action and a Supplemental Claim Form to the claimant to establish whether the claimed recipient received protective supervision would have met the income/resource eligibility requirements for IHSS. The claimant shall have 45 days from the date of the Notice of Action to complete the Supplemental Claim Form and return it to the CWD, or the claim shall be denied.

.532 Upon the CWD's receipt of the completed Supplemental Claim Form, for denied IHSS cases, the CWD shall check the appropriate responses on Part I, steps #10 through #12 of the worksheet. The CWD shall proceed to Section 50-018.55 if:

- (a) The claimant's responses on Part III, Sections 2 and 3, of the form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed.
- (b) If the claimant's responses on Part III, Sections 2 and 3, of the form indicate that the IHSS income/resource eligibility requirements would not have been met during the period claimed, the CWD shall deny the claim for those period(s) of ineligibility, document the reason for denial, and then proceed to Section 50-018.55 for any remaining period(s) of eligibility.
- (c) If the claimant's responses on Part III, Sections 2 and 3 of the form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed, but the CWD obtains information which contradicts that supplied by the claimant, the CWD shall issue a Notice of Action For Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information, if available.

.533 If the claimant fails to return the completed Supplemental Claim Form to the CWD within 45 days from the date of the Notice of Action, the CWD shall deny those months in which the IHSS eligibility could not be established. If there are any remaining months of potential eligibility, the CWD shall determine eligibility and shall proceed, as applicable, to Section 50-018.55.

.54 Calculating the Actual Retroactive Payments and Underpayments -IHSS Case Record For Period Being Claimed

.541 Parts II and III of the Standard Claim Form and information from the case record, if available, shall be used to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determinative Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments if the claimant is found eligible.

.542 For each claim in which IHSS eligibility during the applicable retroactive payment and/or underpayment periods has been established by the findings in the case record, the CWD shall use Part II of the appropriate worksheet to calculate and document the payments due for each month as follows:

- (a) Each month and year claimed during the retroactive payment and/or underpayment period shall be listed in Column 1.
- (b) A determination of whether the claimant is "class eligible," as provided on Part I, step #1, shall be entered for each eligible month in Column 2.

- (c) The number of hours claimed, as entered on Parts II and III of the Standard Claim Form, shall be entered in Column 3.
- (d) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.
- (e) The amount of payment the IHSS recipient was originally authorized during the applicable retroactive and/or underpayment period shall be entered by the CWD, from review of the case record, in Column 5.
- (f) The applicable statutory maximum as specified in Section 50-018.58, shall be entered by CMIPS in Column 6.

  - (1) If the case record indicates that the IHSS recipient was severely impaired, CMIPS shall calculate payments using the applicable severely impaired maximums. If the case record indicates that the IHSS recipient was nonseverely impaired, CMIPS shall calculate payments using the applicable nonseverely impaired maximums. The CWD shall enter the appropriate impairment level in Column 7.
- (g) The applicable statutory maximum, as specified in Section 50-018.58 minus the amount originally authorized and entered in Column 5 shall be calculated by CMIPS in Column 8.
- (h) Total retroactive payments and/or underpayments due shall be calculated by CMIPS in Column 9 as follows:

  - (1) For those claims in which it has been established by the case record that the person who is claimed to have received protective supervision services was an IHSS recipient, the total retroactive payments and/or underpayments due shall be the lesser of either of the following:

    - (A) The difference between the applicable statutory maximum, as specified in Section 50-018.58 and the amount originally authorized, as entered in Column 5, or;
    - (B) The amount claimed, as entered in Column 4.
  - (2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest. CMIPS shall calculate the amount of prejudgment interest due, based on the amount of retroactive payments in Column 9.



(3) Underpayments due shall not be subject to prejudgment interest.

.543 After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.

.55 Calculating the Actual Net Retroactive Payments and/or Underpayments -Denied and No Record Cases

.551 Parts II and III of the Standard Claim Form, and the case record and Supplemental Claim Form, if available, shall be utilized to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determination Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments if the claimant is found eligible.

.552 For each claim in which the CWD has either located a record of IHSS denial or the CWD has been unable to locate a case record and eligibility for IHSS has been established by the responses on the Supplemental Claim Form, the CWD shall use Part II of the appropriate worksheet to calculate and document the payments due as follows for each month claimed:

(a) Each month and year claimed during the retroactive payment and/or underpayment claim period shall be listed in Column 1.

(b) A determination of whether the claimant is class eligible, as indicated on Part I, step #1, shall be entered for each eligible month in Column 2.

(c) The number of hours claimed, as provided on Parts II and III of the Standard Claim Form, shall be entered in Column 3.

(d) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.

(e) The applicable nonseverely impaired statutory maximum, as specified in Section 50-018.58 shall be calculated by CMIPS in Column 6.

(1) The CWD shall use the applicable nonseverely impaired statutory maximum to calculate payments due for all eligible cases in which: the CWD has no record of denial or the case record could not be located; eligibility has been established through the Supplemental Claim Form; and, available evidence does

not clearly show recipient need at the severely impaired level. The CWD shall enter the appropriate impairment level in Column 7.

(f) The total retroactive payments and/or underpayments due, which shall be the amount claimed, as specified in Section 50-018.542(d), (the amount claimed for any month does not exceed the applicable nonseverely impaired statutory maximum during the month claimed) shall be calculated by CMIPS in Column 9.

(1) The total payments due shall be limited to the applicable nonseverely impaired statutory maximum amount during the month claimed.

(2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest.

(3) Underpayments due shall not be subject to prejudgment interest.

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After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.

.56 The CWD shall use the Miller v. Woods Underpayment Eligibility Determination Worksheet to document all determinations for underpayment claims which were determined eligible for retroactive payments under Miller I or Miller II. Information from the Standard Claim Form, Retroactive Payment Eligibility Determination Worksheet, and Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.

.561 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, at the top of Part I.

.562 The CWD shall determine whether the claimant is a spouse by reviewing Part I, Section 4 of the Standard Claim Form.

(a) If the claimant is a spouse, the CWD shall document this on Part I, step #1 of the worksheet, and shall deny the claim for underpayments. The CWD shall refer the claimant to WRO and include a WRO Standard Claim Form with the Miller II denial Notice of Action.

(b) If the claimant is not a spouse, the CWD shall proceed to step #2 of the worksheet.

.563 The CWD shall determine the claimed recipient's eligibility for class membership by reviewing the claimant's response on Part I, Section 2, of the Standard Claim Form, and shall document these findings on step #2 of the worksheet.

- (a) If the claimant answered "no" to questions 2A, B, C, or D of the Standard Claim Form, the CWD shall issue a denial Notice of Action.
  - (b) If the claimant answered "yes" to all of the above questions, the CWD shall proceed to step #3 of the worksheet.
- .564 The CWD shall review the Standard Claim Form, Part I, Section 2, question 2F to determine if the claimed recipient applied for and/or was denied IHSS during the claim period.
  - (a) If the claimant answered "no" to the first part of question 2F, the CWD shall issue a denial Notice of Action.
  - (b) If the claimant answered "yes" to the first part of question 2F, the CWD shall proceed to step #4 of the worksheet.
- .565 The CWD shall determine if the claimant filed a claim under Miller I by reviewing the case record or CMIPS.
  - (a) If the CWD determines the claimant did file a claim under Miller I, the CWD shall proceed to step #5 of the worksheet.
  - (b) If the CWD determines the claimant did not file a claim under Miller I, the CWD shall proceed to step #7 of the worksheet.
- .566 If the claimant filed a claim under Miller I as documented in step #4 of the worksheet, the CWD shall determine if the claim was denied by reviewing the case record or CMIPS.
  - (a) If the Miller I claim was denied, the CWD shall deny the Miller II underpayment claim.
  - (b) If the Miller I claim was not denied, the CWD shall proceed to step #6 of the worksheet.
- .567 If the claimant filed a claim under Miller I as documented in step #4 of the worksheet, the CWD shall determine if the Miller I claim was approved through the end of the retroactive payment period by reviewing the case record or CMIPS.
  - (a) If the Miller I claim was approved through the end of the retroactive payment period, the CWD shall proceed to step #9 of the worksheet.
  - (b) If the Miller I claim was not approved through the end of the retroactive payment period, the CWD shall deny the Miller II underpayment claim.

.568 If the CWD determines the claimant did not file a claim under Miller I, the CWD shall determine if the claimant is eligible for retroactive payments by reviewing the Retroactive Payment Eligibility Determination Worksheet.

(a) If the claimant is not eligible for retroactive payments under Miller II, the CWD shall deny the claim for underpayments.

(b) If the claimant is eligible for retroactive payments under Miller II, the CWD shall determine if the claimant is eligible for retroactive payments through the end of the retroactive payment period, April 30, 1984.

(1) If the claimant is not eligible for retroactive payments through the retroactive period, April 30, 1984, the CWD shall document this on step #8 of the worksheet and deny the claim for underpayments.

(2) If the claimant is eligible for retroactive payments through the end of the retroactive payment period of April 30, 1984, the CWD shall document this on step #8 of the worksheet, and proceed to step #9 of the worksheet.

.569 The CWD shall determine if there is an IHSS case record for the claimant and check the appropriate response on step #9 of the worksheet.

(a) If the CWD determines there is no IHSS case record, the CWD shall compute underpayments at NSI maximums and proceed to Part II of the worksheet.

(b) If the CWD determines there is an IHSS case record, the CWD shall check the appropriate response on step #10 of the worksheet, and calculate underpayments at the appropriate maximums, taking into account payment of previously authorized IHSS services.

.57 Calculating the Actual Underpayments - Claims With and Without an IHSS Case Record

.571 The CWD shall use Section 50-018.54 to calculate underpayments for claims with an IHSS case record, which are otherwise eligible to receive underpayments.

.572 The CWD shall use Section 50-018.55 to calculate underpayments for claims with no IHSS case record, which are otherwise eligible to receive underpayments.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991,  
case no. 472068; and Sections 12300, 12304, and 12304.5, Welfare  
and Institutions Code.

Adopt New Section 50-018.58 to read:

.58 IHSS Statutory Maximum During Retroactive Payment and Underpayment Periods

<u>Effective Date</u>	<u>NSI</u>	<u>SI</u>
<u>7/1/78 --- 6/30/79</u>	<u>\$431</u>	<u>\$621</u>
<u>7/1/79 --- 6/30/80</u>	<u>\$460</u>	<u>\$664</u>
<u>7/1/80 --- 6/30/81</u>	<u>\$532</u>	<u>\$767</u>
<u>7/1/81 --- 6/30/82</u>	<u>\$581</u>	<u>\$838</u>
<u>7/1/82 --- 6/30/83</u>	<u>\$581</u>	<u>\$838</u>
<u>7/1/83 --- 6/30/84</u>	<u>\$604</u>	<u>\$872</u>
<u>7/1/84 --- 6/30/85</u>	<u>\$638</u>	<u>\$921</u>
<u>7/1/85 --- 8/31/86</u>	<u>\$674</u>	<u>\$974</u>

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068; and Sections 12300, 12304, and 12304.5, Welfare and Institutions Code.

Adopt New Section 50-018.61 to read:

.6 General Provisions

.61 Share of cost

.611 The CWD shall not consider any recipient share of cost when computing the amount of retroactive payments and/or underpayments due.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068; and Sections 12300 and 12304.5, Welfare and Institutions Code.

Adopt New Section 50-018.62 to read:

.62 Prejudgment Interest

.621 Prejudgment interest for retroactive payments only shall be calculated at the following rates:

(a) Seven percent for the period April 1, 1979 through December 31, 1982; and,

(b) Ten percent for the period January 1, 1983 through April 30, 1984.

.622 The interest shall be computed on the amount of the monthly payment up through the last day of the month following the month in which payment is authorized.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.



Adopt New Section 50-018.63 to read:

.63 Notices of Action

.631 For each claim received for retroactive payments and/or underpayments, the CWD shall issue a final Notice of Action. The Notice of Action shall contain the following information:

- (a) The month(s) determined eligible and/or ineligible for retroactive payments and/or underpayments. The reason(s) for any months determined ineligible shall be clearly stated;
- (b) The amount of retroactive payments due for each month, which shall be shown with and without interest;
- (c) The amount of retroactive payments and interest due for each year, if payments are claimed for more than one year;
- (d) The total retroactive payments due and the total amount of interest due;
- (e) The combined amount of retroactive payments and interest due;
- (f) The amount of underpayments due for each month, for each year, if payments are claimed for more than one year, and the total underpayment due;
- (g) A statement regarding withholding taxes;
- (h) A statement regarding the claimant's right to a State Hearing on Miller v. Woods determinations made by the CWD and information on how to request such hearings.

.632 Each Notice of Action issued due to the claimant's failure to complete either the Standard Claim Form or Supplemental Claim Form in its entirety shall specify those sections of the form in need of completion.

.633 Each Notice of Action issued as a result of the CWD having contradictory information shall include a copy of the information and shall advise the claimant that he/she has 45 days from the date of the Notice of Action to provide additional information, if applicable.

- (a) If the claimant does not respond within 45 days and provide information to rebut the CWD's contradictory information, the CWD shall issue a final Notice of Action denying the claim for the months of ineligibility.

- .634 For each claim denied, the Notice of Action shall clearly state the reason(s) for denial for each period claimed.
- .635 For each approved claim in which the claimant is currently an IHSS recipient, the Notice of Action shall advise the claimant that the payment received as a result of his/her Miller v. Woods claim may adversely affect his/her IHSS, SSI eligibility or other aid program eligibility and tax liability.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068; and Sections 12300 and 12300.2, Welfare and Institutions Code.

Adopt New Section 50-018.64 to read:

.64    State Hearings

.641    The right to a state hearing on any Miller v. Woods claim shall be granted only to Miller v. Woods claimants or their authorized representatives.

Authority Cited:    Sections 10553 and 10554, Welfare and Institutions Code.

Reference:            Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068; and Sections 10950 and 12300, Welfare and Institutions Code.

Adopt New Section 50-018.65 to read:

.65 Treatment of Lump Sum Payments in the IHSS Program

.651 It shall be the responsibility of the CWD to determine if the lump sum Miller v. Woods payments affect or do not affect the continued eligibility of all Miller v. Woods claimants who are currently IHSS recipients.

.652 Miller v. Woods payments shall be disregarded for IHSS financial eligibility determinations for the month of receipt and the following month. Any remaining balance from the Miller v. Woods payments shall be counted as a resource in the second month following the month of receipt.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

Adopt New Sections 50-018.7 and .8 to read:

.7 Monitoring CWD Compliance

.71 County Statistical Reports

.711 Beginning February 1, 1993 and continuing until an eligibility determination has been made on each claim received, the SDSS shall compile a monthly report on retroactive payment claims and a separate monthly report on underpayment claims. The reports shall contain the following information:

- (a) The number of claims received;
- (b) The number of claims denied;
- (c) The number of claims approved;
- (d) The number of claims pending; and,
- (e) The amount of payments approved.

.72 Final Report

.721 SDSS shall obtain from the CMIPS a final report, by county, that includes the following:

- (a) The number of claimants paid;
- (b) The total amount of retroactive payments paid;
- (c) The number of underpayments paid; and,
- (d) The total amount of underpayments paid.

.73 Beginning with the end of the first month of the claim period, CMIPS will provide a report on the status of each Miller I claim reopened as a result of being denied due to being received by the CWD after the end of the Miller I claim period.

.731 The report shall include, by county, a listing of each reopened claim to include name of recipient, name of claimant, case number, provider number, and NOAs issued to date.

.732 This listing shall be continued until each claim on the listing has been approved or denied.

.733 A final report on the status of these reopened Miller I claims shall be made, to include, by county and statewide: number of Miller I claims reopened, number of approvals, number of denials, total dollar amount retroactive payments, total dollar amount of prejudgment interest, the total of retroactive payments and prejudgment interest, and the total amount of underpayments authorized.

.74 Case Reviews

.741 Based on the quarterly reports, SDSS shall determine the fifteen (15) counties having the largest number of claims over the eight-month period.

.75 CWD Cooperation

.751 Each CWD shall cooperate with SDSS in providing information deemed necessary to monitor county compliance with the provisions of Section 50-018 and the Miller II final judgment.

.8 Appendix - Forms

.81 The following forms are to be used to process Miller v. Woods claims:

- (a) Poster - 2042 (Eng/Sp) (11/92)
- (b) Explanatory Flyer - 2031 (Eng/Sp) (11/92)
- (c) Provider Standard Claim Form - 2000 (Eng/Sp) (11/92)
- (d) Provider Supplemental Claim Form - 2001 (Eng/Sp) (11/92)
- (e) Provider Retroactive Eligibility Determination Worksheet - 2003 (Eng/Sp) (11/92)
- (f) Provider Underpayment Eligibility Determination Worksheet - 2002 (Eng/Sp) (11/92)
- (g) Applicant/Recipient Standard Claim Form - 2028 (Eng/Sp) (11/92)
- (h) Applicant/Recipient Supplemental Claim Form - 2029 (Eng/Sp) (11/92)
- (i) Applicant/Recipient Eligibility Determination Retroactive Worksheet - 2027 (Eng/Sp) (11/92)
- (j) Applicant/Recipient Underpayment Eligibility Determination Worksheet - 2030 (Eng/Sp) (11/92)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended Judgment regarding Miller v. Woods dated July 19, 1991, case no. 472068.

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

STANDARD (REV. 2-91)

See instructions on reverse

For use by Secretary of State only

## AGENCY

California Dept. of Social Services

AGENCY FILE NUMBER (if any)

0892-29

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

PREVIOUS REGULATORY ACTION NUMBER

93-0121-05E

For use by Office of Administrative Law (OAL) only

1993 JAN 21 PM 4:46

OFFICE OF  
ADMINISTRATIVE LAW  
ENDORSED  
APPROVED FOR FILING

FEB 01 1993

Office of Administrative Law

NOTICE

REGULATIONS

FILED

In the office of the Secretary of State  
of the State of California

FEB 01 1993

At 4:05 O'clock P.M.

MARCH FONG EU, Secretary of State

By Kathleen J. Mosland  
Deputy Secretary of State

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE WRO v. McMahon		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	
<input type="checkbox"/> Other					
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S)	ADOPT
Manual of Policies and Procedures (MPP)	Section 50-061.1 et seq.
SECTIONS AFFECTED	AMEND
	REPEAL

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346)
 ☐ Resubmittal
 ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 ☒ Emergency (Gov. Code, § 11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only
 ☐ Other (specify)

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

N/A

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State
 ☒ Effective on filing with Secretary of State
 ☐ Effective other (Specify)

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☒ Department of Finance (Form STD. 399)
 ☐ Fair Political Practices Commission
 ☐ State Fire Marshal

☐ Other (Specify)

## 6. CONTACT PERSON

Jim Rhoads, Assistant Chief, Regulations Development Bureau

TELEPHONE NUMBER

657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

DATE

JAN 20 1993

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 2-91) ( REVERSE)

**INSTRUCTIONS FOR PUBLICATION OF NOTICE  
AND SUBMISSION OF REGULATIONS**

The revised form STD. 400 replaces form STD. 398 (REV. 3/85) (Face Sheet for Filing Notice of Proposed Regulatory Action in the California Administrative Notice Register) and form STD. 400 (REV. 8/85) (Face Sheet for Filing Administrative Regulations with the Office of Administrative Law). Use the new form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

**ALL FILINGS**

Enter the agency name and agency file number, if any.

**NOTICES**

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations, the statement of reasons and a list of small businesses to whom the notice will be mailed, if any. If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified" and place a number in the box marked "Notice File Number." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

**REGULATIONS**

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Government Code § 11347.3 for rulemaking file contents.)

**RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS**

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the number of the previously disapproved or withdrawn filing in the box marked

"Previous Regulatory Action Number" at the top of the form and submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Government Code §§ 11349.4 and 11347.3 for more specific requirements.)

**EMERGENCY REGULATIONS**

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Government Code § 11346.1 for other requirements.)

**NOTICE FOLLOWING EMERGENCY ACTION**

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A only. Please insert the OAL number for the original emergency filing in the box marked "Emergency Number" at the top of the form. OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

**CERTIFICATE OF COMPLIANCE**

When filing the certificate of compliance for emergency regulations, fill out Part B on the form that was previously submitted with the notice, or, if a new STD. 400 is used, please include the previously assigned numbers in the boxes marked "Notice File Number" and "Emergency Number." The materials indicated in these instructions for "REGULATIONS" must also be submitted.

**EMERGENCY REGULATIONS - READOPTION**

When submitting previously approved emergency regulations for readoption, use a new STD. 400 and fill out Part B, including the signed certification, and enter the OAL number of the original emergency filing in the box marked "Emergency Number" at the top of the form.

If you have any questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law at (916) 323-6225 or ATSS 473-6225.



Adopt new Section 50-061 to read:

50-061 WRO v. McMAHON

50-061

HANDBOOK BEGINS HERE

.1 Background

These regulations cover the retroactive payment and underpayment relief under an amended judgment in Welfare Rights Organization v. McMahon (WRO). Below is an overview of the case.

- .11 The case: The suit claimed that SDSS did not promptly implement 1983 legislation authorizing spouse providers to be paid for protective supervision and travel to health related appointments, termed medical accompaniment. From July 1, 1981 to June 30, 1983, IHSS statutes prohibited paying spouse providers for these services. The legislation (Stats. 1983, ch. 232, section 116.7) required these services be paid from July 1, 1983 on.
- .12 Original judgment: The Superior Court (San Diego Co.) entered judgment in this case on November 23, 1988. Its implementation was delayed because of problems in implementing the original judgment in Miller I. No implementing regulations were issued for the original judgment.
- .13 Amended judgment: The Superior Court approved an amended judgment in this case on July 19, 1991. The modifications were based on the amended judgment in Miller II, approved by the court on July 19, 1991. The judgments contain consistent provisions insofar as practical. SDSS plans to implement the WRO and Miller II cases concurrently.
- .14 The class covered: The amended judgment applies to spouse providers as defined in Section 50-061.411 and spouse applicants/recipients as defined in Section 50-061.412.
- .15 Retroactive payments: Claimants may be eligible for retroactive payments from July 1, 1983 through September 30, 1984, plus prejudgment interest.
- .16 Underpayments: Claimants may be eligible for underpayments from October 1, 1984 through September 30, 1985. There is no prejudgment interest for underpayments.
- .17 Statutory maximums: Retroactive payments and underpayments are limited to the severely impaired (SI) or nonseverely impaired (NSI) maximum levels in effect at the time. In addition, such payments must also be reduced by any IHSS amounts authorized to the claimed recipient for any month in which WRO retroactive payments and/or underpayments are claimed.

The following provisions describe the procedures by which potential class members will be notified, claims for retroactive payments and underpayments will be processed, and payments due will be determined and paid.

HANDBOOK ENDS HERE

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. Mahon dated July 19, 1991, Case No. 531015.

Adopt New Section 50-061.2 to read:

.2 Notification of Potential Claimants

.21 In order to notify potential claimants, the Department shall:

.211 Send an Explanatory Flyer in English and Spanish, and a Provider Standard Claim Form in English, with instructions of how to obtain the Spanish version, to all past and present IHSS spouse providers contained on the IHSS Payroll System, from July 1, 1983 through November 30, 1988, who at any time during this period lived at the same address as the recipient. The Department will utilize the services of the Franchise Tax Board and Department of General Services to determine and mail to the most current mailing address available for providers identified in this manner.

.212 Provide each CWD with sufficient quantities of Standard Claim Forms, Supplemental Claim Forms, Explanatory Flyers, and 17" x 22" posters modeled after the Explanatory Flyers. Each of the above documents and posters will be in both English and Spanish.

(a) For WRO, there shall be a Provider Standard Claim Form, and a Provider Supplemental Claim Form.

(b) Provider claimants and recipient claimants shall use the same version of these forms.

.213 Provide those interested organizations and groups listed in Appendix A-1 through A-9 of the final judgment referred to in Section 50-061.11 with copies of the Standard Claim Forms, Explanatory Flyers, and the posters, with a request to display the posters in a prominent location and distribute the Explanatory Flyers and Standard Claim Forms on request throughout the claim period.

.214 Provide the Federal Social Security Administration offices in California with copies of the posters, in English and Spanish, and request that agency to display the posters throughout the claim period in prominent locations where there is public access.

.22 The claim period identified in this section shall be the eight-month period from February 1, 1993 through September 30, 1993.

.23 In order to notify potential claimants, the CWDs shall:

.231 Place the posters described above in a prominent location in each local office having contact with the public throughout the claim period.

.232 Provide the Explanatory Flyer and Standard Claim Form to any person inquiring about eligibility for retroactive payments and/or underpayments for WRO v. McMahon.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.3 to read:

.3 Application for Retroactive Payments and Underpayments

.31 Claimant Responsibilities

.311 The claimant shall cooperate in obtaining all information necessary to process the claim. Failure to provide the needed information shall result in the denial of the claim or of that portion of the claim for which the information is necessary.

.312 All claims for retroactive payments and underpayments shall be filed on a ~~WRO v. McMahon~~ claim form with the county welfare department in which the claimant currently resides.

.313 The claimant shall complete the claim form, sign the form under penalty of perjury, obtain the signature of a witness under penalty of perjury and mail or deliver the completed claim form to the CWD where she/he lives.

.314 The claim form shall be completed as stipulated in Sections 50-061.431 and .443, and hand-delivered by close of business or mailed and postmarked to the CWD by September 30, 1993. Claims hand-delivered or mailed and postmarked after this date shall be denied.

.315 If the claimant is sent a Notice of Action requesting the completion of either the Standard Claim Form or the Supplemental Claim Form, the claimant shall have forty-five (45) days from the date of the Notice of Action to complete and hand-deliver or mail the document to the CWD. Whenever the claimant must return a document or documents to the CWD within forty-five (45) days, the following shall apply:

(a) If mailed, the document(s) shall be postmarked by the last day of the forty-five (45) day period.

(b) If hand-delivered, the document(s) shall be delivered to the CWD no later than the close of business on the last day of the forty-five (45) day period.

(c) If required document(s) are not hand-delivered/mailed and postmarked within the time limits stated in this section, denial of the claim, or that portion of the claim for which the information is needed, shall result.

.316 Unless otherwise specified, all references to "days" in regard to time limits shall be construed to mean "calendar" days.

.32 CWD Responsibilities - Filing Date/Time Limits

Standard  
Claim  
Form

- (a) The CWD shall date stamp the claim form when received. The CWD shall retain all claim forms and envelopes of any claims received for the WRO v. McMahon lawsuit.
- (b) The date of filing shall be the date postmarked on the envelope.
- (c) If the claim is filed in person at the CWD, the date of filing shall be the date received in the CWD office, e.g., the date stamped on the claim.
- (d) If the filing date cannot be determined pursuant to Section 50-061.32(b) and (c), the filing date shall be the date the claim was signed.
- (e) If the claim must be forwarded to another county for processing because the services were either provided or received in the second county, the first county's filing date shall apply.
- (f) If the date of filing on the Standard Claim Form is after September 30, 1993, the claim shall be denied.
- (g) If a Supplemental Claim Form, as described in Section 50-061.441, must be sent to the claimant, the filing date shall not change. The filing date shall remain the same as that which was determined in accordance with Sections 50-061.32, (b), (c) or (d).
- (h) If the CWD receiving the claim determines that services were received or provided while the recipient/applicant lived in another county, for all or part of the claim period, the CWD shall:

  - (1) Send a copy of the claim to each affected county. The CWD shall also send a Notice of Action to the claimant within 10 calendar days of the filing date explaining that the correct CWD will process the claim for the period of time in which the services were provided/received in the other county.
  - (2) As noted in Section 50-061.32 (e) the filing date for the claim will be that determined by the first CWD receiving the claim.
- (i) The CWD shall determine eligibility/ineligibility and compute the retroactive payments and underpayments due within 45 days of the filing date. The CWD shall input this information into the Case Management Information and Payrolling System (CMIPS) so interest can be computed on approved cases and the computation returned to the CWD.

  - (1) The CMIPS shall compute the total retroactive payment and/or underpayment amount due, with and without interest and return the computation on a form developed by SDSS to the appropriate CWD within five working days from the date of CWD input.

- (j) Within 10 working days of receiving the computation from CMIPS, the CWD shall issue a Notice of Action to the claimant which contains the information specified in Section 50-061.631, and, if applicable, Sections 50-061.634 and .635. Once the CWD has issued the notice to the claimant, the CWD shall then send the necessary documents through the CMIPS so payment may be issued.
- (k) CWDs receiving claims forwarded from another county shall process the claim, determine eligibility, compute retroactive payments and/or underpayments, compute interest, issue the necessary Notice of Action and forward the necessary documents to the CMIPS within 45 days of receipt from the original county.
- (l) Time limits for CWDs specified in Section 50-061.32 may be exceeded in situations where completion of the determination of eligibility for retroactive payments and/or underpayments is delayed due to circumstances beyond control of the CWD. In these instances, the reason(s) for the delay(s) shall be documented in the affected claimant's case file.
- (m) Unless otherwise specified, all references to "days" for these time limits shall be construed as "calendar" days.

.33. Retroactive Payment and Underpayment Time Periods

- .331 Eligibility for retroactive payments under WRO shall be limited to the following periods:
  - (a) July 1, 1983 through September 30, 1984 for claims in which the housemate was a spouse provider.
- .332 Claims in which the period claimed is beyond the retroactive time period specified in Section 50-061.331(a) shall be processed as underpayments for the period October 1, 1984 through September 30, 1985.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Sections 50-019.41, .42, .43, and .44 to read:

.4 Claim Processing

.41 Conditions for Class Membership

.411 IHSS spouse provider claimants may be eligible to receive retroactive payments and/or underpayments in WRO. Spouse provider claimants who are potentially eligible to receive these payments are persons who:

- (a) Were legally married to an individual meeting all applicable conditions stated in Section 50-061.412, and provided protective supervision and/or medical accompaniment services to that individual during the applicable retroactive payment and/or underpayment period specified in Section 50-061.33; or
- (b) Were considered to be a member of a married couple as defined for the purposes of SSI/SSP eligibility in 20 CFR 416.1806, lived with an individual meeting all applicable conditions stated in Section 50-061.412, and provided protective supervision and/or medical accompaniment services during the applicable retroactive payment and/or underpayment period specified in Section 50-061.33; and
- (c) Left full-time employment or was prevented from obtaining full-time employment because no other suitable provider was available, and
- (d) Needed to provide these services to their spouse, or inappropriate placement or inadequate care may have resulted, and
- (e) Were not compensated for providing protective supervision and/or medical accompaniment services for the month(s) claimed.

.412 IHSS recipient/applicant claimants potentially eligible to receive retroactive payments and/or underpayments are persons who:

- (a) Were California residents, aged, blind, or disabled during the applicable retroactive and/or underpayment period specified in Section 50-061.33 and met the eligibility conditions of MPP 30-755; and,
- (b) Required assistance during transportation to and from appointments with physicians, dentists and other health practitioners, where the recipient's presence was required at the destination, and/or



- (c) Were nonself-directing, confused, mentally impaired, or mentally ill, and may have been hurt or injured if left alone, thus meeting the general conditions or requiring the service of protective supervision; and,
- (d) Received IHSS benefits, but were denied protective supervision services during the applicable retroactive payment and/or underpayment period solely because the provider was a spouse, and the amount of benefits was less than the severely impaired or nonseverely impaired maximum, as applicable at the time; and/or
- (e) Received IHSS benefits, but were denied medical accompaniment services during the applicable retroactive payment and/or underpayment period solely because the provider was a spouse, and the amount of benefits was less than the severely impaired or nonseverely impaired maximum, as applicable at the time; or
- (f) Applied for IHSS services during the applicable retroactive payment and/or underpayment period and were denied protective supervision services solely because the provider was a spouse; and/or
- (g) Applied for IHSS services during the applicable retroactive payment and/or underpayment period and were denied medical accompaniment services solely because the provider was a spouse; and,
- (h) Paid the spouse provider during the applicable retroactive payment and/or underpayment period for the provision of protective supervision and/or medical accompaniment services.

.42 Review of Class Membership Questions

.421 The CWD shall review the responses to the class membership qualifying questions in Part I, Section 2 of the Standard Claim Form.

- (a) The CWD shall issue a denial Notice of Action explaining that the claimant is not a WRO v. McMahon class member if the claimant did any of the following:
  - (1) The claimant answered "no" to 2A, or 2B, or 2E, or 2F;
  - (2) The claimant answered "no to both 2C and 2D;
  - (3) The claimant answered "no" to both parts of 2G.

- (b) If the claimant answered "yes" to 2A, or 2B, or 2C, or 2D, or 2E, or 2F, or 2G, and the CWD has information available which contradicts the claimant's contention of class membership, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of this information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.
- (c) If the claimant answered "unknown" to either questions in 2G, the CWD shall issue a Notice of Action and a WRO v. McMahon Supplemental Claim Form to the claimant. The claimant shall have 45 days from the date of the Notice of Action to complete the Supplemental Claim Form and return it to the CWD.

.43 Review of Information Contained on the Standard Claim Form

- .431 The CWD shall review each Standard Claim Form submitted to determine if the claimant has provided the information necessary to further process the claim. For the purposes of this determination, a claim shall be considered complete when all the following requirements are met:
- (a) The following information requested in Part I, Section 1 is provided: claimant's name, social security number, and current address.
  - (b) All qualifying questions in Part I, Section 2 are answered.
  - (c) If Part I, Section 3 is applicable, the claimant's address at the time they claim to have provided/received protective supervision and/or medical accompaniment services.
  - (d) The following information requested in Part I, Section 4 is provided: name of person whom it is claimed needed protective supervision and/or medical accompaniment; his/her current or last known address; and his/her relationship to the provider.
  - (e) Part I, Section 5, is completed with date of marriage of claimant and spouse.
  - (f) Part I, Section 6, is signed by the claimant and dated.
  - (g) In Part I, Section 7, the Standard Claim Form is signed, dated, and the verifying witness' relationship to the claimant and the recipient is identified and this person's address is listed.
  - (h) The information requested in Part II and Part III is provided, as applicable.

(i) The following information requested in Part IV is provided to support the application only if more than eight hours per month of medical accompaniment hours are claimed; the name of the health professional/health facility visited by the claimed recipient; location of origin and destination; type of transportation used; number of months/years visits took place; number of visits per month/year; and approximate duration of round-trip.

.432 If the CWD determines that Part I, or Part IV if applicable, of the Standard Claim Form has not been completely filled out in accordance with the criteria in Section 50-061.431, the CWD shall send the claimant a Notice of Action specifying that portion of the form which is in need of completion. The Notice of Action shall also state that the claimant has 45 days from the date of the Notice of Action to submit the completed form to the CWD. If the completed form is not returned to the CWD within the 45 days, the claim shall be denied, and a denial Notice of Action shall be mailed to the claimant.

.433 Upon receipt of the information requested in Section 50-061.432, the CWD shall review the resubmitted information to determine if the claim is now complete in accordance with the criteria in Section 50-061.431. If complete, the CWD shall continue processing the claim.

(a) If the claim is still not complete because the claimant did not provide all the requested information, the CWD shall deny the claim.

.434 Failure on the part of the claimant to respond within the 45-day period shall result in denial of the claim.

.435 The CWD shall review Parts II, III, and IV of the Standard Claim Form to determine if claimed medical accompaniment hours for any month during the retroactive payment and underpayment claim periods exceed eight hours and if information submitted on Part IV of the form supports the hours claimed. The CWD shall use the medical accompaniment regulations to determine entitlement to medical accompaniment services.

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.436 Medical accompaniment regulations are contained in MPP Section 30-757.15.

HANDBOOK ENDS HERE

- (a) If the CWD determines that Part IV is incomplete or does not support the claim for more than eight hours of medical accompaniment for any month during the retroactive payment or underpayment claim periods, according to the standards set forth in Section 50-061.435, the CWD shall issue a Notice of Action for Adverse Information specifying that Part IV is in need of completion or requesting that the claimant support the hours claimed. The Notice of Action shall also state that the claimant has 45 days from the date of the Notice of Action to submit the completed section or provide the additional information, if available, to the CWD.
- (b) Failure on the part of the claimant to respond within the 45-day period shall result in denial of the unsupported portion of the claim.
- (c) If the CWD determines that the medical accompaniment hours claimed during the retroactive payment and underpayment period do not exceed eight hours, or if more than eight hours per month are adequately supported by information submitted on Part IV of the Standard Claim Form, the CWD shall continue processing the claim.

.44 Supplemental Claim Form

.441 The CWD shall issue a Supplemental Claim Form to the claimant whenever the CWD is unable to locate either a previously approved IHSS case record or a record of denial of IHSS eligibility. The purpose of the Supplemental Claim Form shall be to: (1) request information from the claimant regarding the claimed recipient's applying for and being denied IHSS during the retroactive payment period; and (2) determine whether the person claiming to have received protective supervision and/or medical accompaniment services met and would have met the income/resource eligibility requirements for IHSS services during the period claimed. The CWD shall include a Notice of Action with the Supplemental Claim Form stating that completion of the form is necessary in order to further determine eligibility for retroactive payments and underpayments and that the claimant must return the completed form to the CWD within 45 days.

- (a) If the CWD has no case record of an IHSS application and/or denial for the claimed recipient during the retroactive payment periods being claimed, the Notice of Action accompanying the Supplemental Claim Form shall request the claimant to complete all parts of the Supplemental Claim Form in accordance with the criteria in Section 50-061.443.
- (b) If the CWD has a case record showing the claimed recipient had applied for and was denied IHSS for the retroactive payment periods being claimed, but the CWD cannot determine from the case record whether the claimed recipient met IHSS income/resource eligibility criteria, the Notice of Action

accompanying the Supplemental Claim Form shall request the claimant to complete Parts I, III, IV of the Supplemental Claim Form, relating to income/resource eligibility for IHSS, in accordance with the criteria in Section 50-061.443.

(c) If the CWD has lost or destroyed its records or did not maintain adequate records during the claimed period, the CWD shall send the Supplemental Claim Form requesting completion of applicable parts of the form, in accordance with the criteria in Section 50-061.443.

.442 Upon receipt the CWD shall date stamp the submitted Supplemental Claim Form following the provisions of Section 50-061.32(a).

.443 The CWD shall review the submitted Supplemental Claim Form to ensure that all required questions are answered, all required information is provided, and that the form is signed and dated by both the claimant and a verifying witness. For the purposes of this determination, the Supplemental Claim Form shall be considered complete when the required sections are completed as specified in Section 50-061.441 and:

(a) The following information requested in Part I, Section 1 is provided: name and current or last known address of the spouse who claims to have provided protective supervision and/or medical accompaniment services during the months claimed.

(b) Part I, Section 2, the name and current or last known address of the spouse who claims to have received protective supervision and/or medical accompaniment services during the months claimed, is completed.

(c) If Part II is applicable, Sections 1 and 2 requesting information and documentation related to an IHSS application and/or denial for the person for whom it is claimed received protective supervision and/or medical accompaniment services during the months claimed, is completed.

(d) Part III, Sections 1, 2, and 3 relating to the (1) receipt of Supplemental Security Income/State Supplemental Program (SSI/SSP) benefits by spouse named in Part I, Section 2; (2) combined monthly income for claimant and spouse; and (3) the amount of combined average monthly liquid resources in excess of \$2250 for claimant and spouse; during the years for which hours are claimed.

(e) Part IV of the Supplemental Claim Form is signed and dated by the claimant.

(f) Part IV, Section 2 is signed by a verifying witness, dated, with his/her address and relationship to the claimant completed.

.444 If the CWD determines that the Supplemental Claim Form is incomplete based on the criteria in Section 50-061.443, the CWD shall send a Notice of Action requesting the missing information and attach to the Notice of Action a copy of the original Supplemental Claim Form submitted. The Notice of Action shall specify the section number of the form which is in need of completion and shall state that the claimant has 45 days from the date of the Notice of Action to submit the completed form or the claim will be denied.

(a) Upon receipt of the information requested in Section 50-061.444, the CWD shall review the submitted information to determine whether the Supplemental Claim Form is now complete in accordance with Section 50-061.443. If complete, the CWD shall continue with processing the claim. If the Supplemental Claim Form is still not complete, the CWD shall deny the claim.

.445 If the completed Supplemental Claim Form is not received from the claimant within the 45-day limit, the CWD shall deny the claim in accordance with Section 50-061.314.

.446 Information submitted by the claimant on the Supplemental Claim Form shall be presumed to be true as long as the form has been signed and dated by both the claimant and a witness, unless the CWD has information available which contradicts information supplied by the claimant. If the CWD has such information available and the CWD determines that information indicates the claimed recipient of protective supervision/medical accompaniment services would not have been eligible for IHSS, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015; and 20 CFR 416.1806.

Add Section 50-061.45 to read:

.45 Existing Case File and Information Requirement

- .451 The CWD shall determine if there is an existing case file with which to match claim information for determining eligibility.
- .452 In accordance with Section 50-061.44, if the CWD cannot locate a case file for the IHSS recipient/applicant for whom it is claimed protective supervision and/or medical accompaniment services were provided without IHSS compensation, or if the CWD cannot determine eligibility from the existing case file for the months claimed, the CWD shall send the Supplemental Claim Form to the claimant.
- .453 All information received and/or obtained in relation to the WRO v. McMahon court case, and all forms generated as a result of the court case, shall be retained by the CWD in a WRO case file for each claimant. These documents shall include, but not be limited to:
- (a) Completed Standard Claim Form and any subsequent resubmittals;
  - (b) Completed Supplemental Claim Form, if applicable, and any subsequent resubmittals and any documents submitted by the claimant in responding to the Supplemental Claim Form;
  - (c) Completed Eligibility Determination Worksheets, including documentation of retroactive payment and prejudgment interest calculations as well as underpayment calculations;
  - (d) A copy of any Notices of Action sent to the claimant;
  - (e) A copy of any correspondence with other CWDs in relation to the claim;
  - (f) All CMIPS documents; and,
  - (g) A copy of all other documents used in the determination of eligibility and computation of payments.
- .454 The CWD shall not require the claimant to provide information other than that requested on the Standard Claim Form and, if needed, the Supplemental Claim Form. However, the claimant shall be offered an opportunity, in the form of a Notice of Action for Adverse Information, to submit additional information that might rebut a possible denial based on CWD records. The CWD shall consider any additional information submitted by the claimant to support his/her claim.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.46 to read:

.46 Presumptive Need For and Provision of Protective Supervision

.461 If other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of need for protective supervision, the person claiming to have needed protective supervision is presumed to have needed protective supervision for the months claimed during the applicable retroactive payment and/or underpayment period if:

- (a) A need for protective supervision was assessed at any time, in which case the need shall be from that time forward; or,
- (b) The need for protective supervision is attested to by a sworn statement on the Standard Claim Form from the claimant and verified by a sworn statement of a witness. The CWD shall consider any other documentation submitted by the claimant to support the presumption of need for protective supervision.

.462 The person claiming to have needed protective supervision is presumed to have received protective supervision services for the months claimed during the applicable retroactive payment and underpayment periods if the delivery of such services is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness, contained on the Standard Claim Form, and other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of delivery of protective supervision services.

- (a) The CWD shall presume that any protective supervision services provided and claimed were not provided voluntarily.

.463 If information available to the CWD rebuts the presumption of either the need for or the delivery of protective supervision services during any of the months claimed during the applicable retroactive payment and underpayment period, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

.464 If the CWD's IHSS recordkeeping system shows no record of the claimed recipient ever applying for or being denied IHSS for the period being claimed, the CWD shall issue a Notice of Action requesting the claimant to complete an attached Supplemental Claim Form in accordance with Section 50-061.44. The claimant shall have 45 days from the date of the Notice of Action to submit the completed Supplemental Claim Form.



- (a) If the claimant does not submit the Supplemental Claim Form within the 45-day period, the claim shall be denied.
- (b) If the claimant submits the Supplemental Claim Form, and it is complete based on criteria in Section 50-061.443, the CWD shall continue processing the claim.
- (c) If the submitted Supplemental Claim Form is incomplete based on criteria in Section 50-061.443, the CWD shall follow instructions in Section 50-061.444.
- (d) If the CWD determines that information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall continue to process the claim to determine eligibility for payments.
- (e) If the CWD determines that the information supplied by the claimant does not verify the claimed recipient applied for and was denied IHSS during the retroactive payment period being claimed, the CWD shall issue a denial Notice of Action stating the specific reason(s) for the denial.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.47 to read:

.47 Presumptive Need For and Provision of Medical Accompaniment

.471 If other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of need for medical accompaniment, the person claiming to have needed medical accompaniment is presumed to have needed medical accompaniment for the months claimed during the applicable retroactive payment and/or underpayment period if:

(a) A need for medical accompaniment was assessed at any time, in which case the need shall be from that time forward; or,

(b) The need for medical accompaniment is attested to by a sworn statement on the Standard Claim Form from the claimant and verified by a sworn statement of a witness. The CWD shall consider any other documentation submitted by the claimant to support the presumption of need for medical accompaniment.

.472 The person claiming to have needed medical accompaniment is presumed to have received medical accompaniment services for the months claimed during the applicable retroactive payment and underpayment periods if the delivery of such services is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness, contained on the Standard Claim Form, and other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of delivery of medical accompaniment services.

(a) The CWD shall presume that any medical accompaniment services provided and claimed were not provided voluntarily.

.473 If information available to the CWD rebuts the presumption of either the need for or the delivery of medical accompaniment services during any of the months claimed during the applicable retroactive payment and underpayment period, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

.474 If the CWD IHSS recordkeeping system shows no record of the claimed recipient ever applying for or being denied IHSS for the period being claimed, the CWD shall issue a Notice of Action requesting the claimant to complete an attached Supplemental Claim Form in accordance with Section 50-061.44. The claimant shall have 45 days from the date of the Notice of Action to submit the completed Supplemental Claim Form.

- (a) If the claimant does not submit the Supplemental Claim Form within the 45-day period, the claim shall be denied.
- (b) If the claimant submits the Supplemental Claim Form, and it is complete based on criteria contained in Section 50-061.443, the CWD shall continue processing the claim.
- (c) If the submitted Supplemental Claim Form is incomplete based on criteria contained in Section 50-061.443, the CWD shall follow instructions in Section 50-061.444.
- (d) If the CWD determines that information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall continue processing the claim to determine eligibility for payments.
- (e) If the CWD determines that the information supplied by the claimant does not verify the claimed recipient applied for and was denied IHSS during the retroactive payment period being claimed, the CWD shall issue a denial Notice of Action stating the specific reason(s) for the denial.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.48 to read:

.48 Eligibility for Underpayments

.481 WRO claims shall be eligible for underpayment consideration only if their eligibility for WRO retroactive payments extended through the end of the retroactive payment claim period, September 30, 1984.

(a) Claimants shall have their WRO claim for underpayments denied if their eligibility for retroactive payments does not extend through the end of the WRO retroactive payment claim period, September 30, 1984. Their WRO claim for underpayments shall be denied with a Notice of Action stating the reason for the denial.

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(b) Eligibility for underpayments in WRO results from IHSS cases or WRO cases carried through the effective date of the corrected spouse provider regulations, MPP 30-763.214(f), September 1984. Potentially eligible cases are those that were not corrected as of the effective date of the revised regulations. Claims for underpayments in which there was not an active case requiring updating to reflect the housemate regulations shall be denied, with the exception of approved WRO claimants whose eligibility extends through the end of the retroactive claim period.

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgement regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Sections 50-061.51, .52, .53, .54, .55, .56, and .57 to read:

.5 Use of County Worksheets to Document Findings and Calculate Payments Due.

.51 The CWD shall use the WRO v. McMahon Retroactive Payment Eligibility Determination Worksheet to document all determinations made on each claim submitted. Information from the Standard Claim Form, and the Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.

.511 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, at the top of Part I of the worksheet.

.512 The CWD shall determine the claimed recipient's eligibility for class membership by reviewing the claimant's response on Part I, Section 2, of the Standard Claim Form, and shall document these findings on step #1 of the worksheet

(a) If the claimant answered "yes" to questions 2A, and 2B, and 2E, and 2F, and either 2C or 2D of the Standard Claim Form, the CWD shall proceed to step #2 of the worksheet.

(b) If the claimant answered "no" to questions 2A, or 2B, or 2E, or 2F, or both 2C and 2D, the CWD shall issue a denial Notice of Action explaining that the claimed recipient is not a WRO class member.

.513 The CWD shall determine if the claimed recipient applied for or was denied IHSS during the retroactive claim period by reviewing the claimant's response on Part I, Section 2, question 2G, of the Standard Claim Form, and shall document this finding on step #2 of the worksheet.

(a) If the claimant answered "yes" to either part of question 2G of the Standard Claim Form, the CWD shall proceed to step #3 of the worksheet.

(b) If the claimant answered "no" to both parts of question 2G of the Standard Claim Form, the CWD shall issue a denial Notice of Action.

(c) If the claimant answered "unknown" to either part of question 2G, the CWD shall attempt to locate the case record, or record of denial. If neither can be located, the CWD shall send a Supplemental Claim Form to the claimant.

.514 The CWD shall determine if there is any record of an IHSS approval or denial and shall document this finding on step #3 of the worksheet.

- (a) If there is a record of approval or denial the CWD shall:
  - (1) proceed to step #4 of the worksheet if there is a record of approval for IHSS.
  - (2) proceed to step #8 of the worksheet if there is a record of denial for IHSS.
- (b) If there is no IHSS case record, the CWD shall send the claimant a Supplemental Claim Form.

.52 In determining eligibility for those claims in which the CWD has verified by case record that the claimed recipient of protective supervision and/or medical accompaniment services was authorized IHSS during the month(s) claimed, the CWD shall do the following, using the Retroactive Payment Eligibility Determination Worksheet, Part I, steps #4 through #7:

.521 Determine whether the case record indicates that protective supervision and/or medical accompaniment services were denied during the month(s) claimed for a reason other than because a spouse was providing the service, and check the appropriate response on step #4 of the worksheet.

- (a) If, for any month(s) claimed, the case record indicates that the denial was based on a reason other than the provision of protective supervision and/or medical accompaniment by the spouse, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the information which indicates the reason for denial of protective supervision. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available. The CWD shall process the claim for any remaining month(s) of eligibility, pending receipt of a response from the claimant.

.522 Determine whether any information exists outside the case record which indicates that protective supervision and/or medical accompaniment services were denied during the month(s) claimed for any reason other than those services were provided by the spouse, and check the appropriate response on step #5 of the worksheet. Information outside the case record may consist of, but not be limited to, the CWD's knowledge of the IHSS recipient's placement in a state hospital or other type of out-of-home care during the month(s) claimed.

- (a) If, for any month(s) claimed, information exists outside the case record, as described in Section 50-061.522, the CWD shall document the reason on the provided space on the worksheet, issue a Notice of Action for Adverse Information, and attach a copy of the information which indicates the reason for denial of protective supervision and/or medical accompaniment. The claimant shall have 45

days from the date of the Notice of Action to provide additional information if available. The CWD shall process the claim for any remaining month(s) of eligibility, pending the receipt of a response from the claimant.

.523 Determine from the case record whether the IHSS recipient was receiving the statutory maximum payment, as described in Section 50-061.58, during any eligible month(s) claimed. Check the appropriate response on step #6 of the worksheet.

(a) For any eligible month(s) claimed in which the IHSS recipient was receiving the statutory maximum payment, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the relevant information from the case record. The claimant shall have 45 days from the date of the Notice of Action to provide additional information regarding their level of authorized hours, if available.

(b) The CWD shall proceed to Section 50-061.54 and determine if there are any remaining month(s) in which the case was not authorized the statutory maximum.

.524 Determine from the case record whether the claimed IHSS recipient was severely impaired (SI) or nonseverely impaired (NSI), and check the appropriate response on step #7 of the worksheet.

.53 In determining eligibility for those claims in which the claimed recipient of protective supervision and/or medical accompaniment was denied IHSS during the month(s) claimed, the CWD shall complete step #8 of the Retroactive Payment Eligibility Determination Worksheet, locate the record of denial, and follow the procedures in Sections 50-061.521 and .522. The CWD shall proceed to Section 50-061.55 for instructions to complete the calculation of net payments on WRO claims in which an IHSS case had been denied and the WRO claimant is determined eligible for payments.

.531 If the CWD is unable to determine from the record the reason for denial of IHSS during either the entire or partial period claimed, the CWD shall issue a Notice of Action and a Supplemental Claim Form to the claimant to establish whether the claimed recipient of protective supervision and/or medical accompaniment would have met the income/resource eligibility requirements for IHSS. The claimant shall have 45 days from the date of the Notice of Action to complete the Supplemental Claim Form and return it to the CWD, or the claim shall be denied.

.532 Upon the CWD's receipt of the completed Supplemental Claim Form, for denied IHSS cases, the CWD shall check the appropriate responses on Part I, steps #9 through #11, of the worksheet. The CWD shall proceed to Section 50-061.55 if:

(a) The claimant's responses on Part III, Sections 2 and 3, of the form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed.

(b) If the claimant's response on Part III, Sections 2 and 3, of the Form indicate that the IHSS income/resource eligibility requirements would not have been met during the period claimed, the CWD shall deny the claim for those period(s) of ineligibility, document the reason for denial, and then proceed to Section 50-061.55 for any remaining period(s) of eligibility.

(c) If the claimant's responses on Part III, Sections 2 and 3, of the Form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed, but the CWD obtains information which contradicts that supplied by the claimant, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

.533 If the claimant fails to return the completed Supplemental Claim Form to the CWD within 45 days from the date of the Notice of Action, the CWD shall deny those months in which the IHSS eligibility could not be established. If there are any remaining months of potential eligibility, the CWD shall determine eligibility and shall proceed, as applicable, to Section 50-061.55.

.54 Calculating the Actual Retroactive Payments and Underpayments - IHSS Case Record For Period Being Claimed

.541 Parts II, III, and IV of the Standard Claim Form and information from the case record, if available, shall be utilized to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determination Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments and underpayments if the claimant is found eligible.

.542 Part II, Section A of the appropriate worksheet shall be utilized to record hours of protective supervision and/or medical accompaniment hours claimed, adjusted medical accompaniment hours as determined by the CWD, and total adjusted hours claimed.

(a) Total protective supervision hours, if claimed, shall be entered in the first column of Part II, Section A, of the appropriate worksheet, for each month claimed.

(b) Medical accompaniment hours claimed, if the claimant is determined eligible to be paid for medical accompaniment upon review of Part IV of the Standard Claim Form by the CWD, shall be entered in the second column of Part II, Section A, of the appropriate worksheet, for each month claimed.



- (c) Medical accompaniment hours claimed shall be adjusted by the CWD when the monthly amount of medical accompaniment hours claimed are more than eight hours per month, and are not supported by information submitted on Part IV of the Standard Claim Form or other information submitted by the claimant.
- (d) The CWD shall review all information submitted by the claimant in response to the Notice of Action for Adverse Information regarding claims for medical accompaniment hours which exceed eight hours per month. The CWD may use the medical accompaniment regulations contained in MPP Section 30-757.15, to determine the correct assessment for this service if the claimant is determined eligible for retroactive payments for this service. The CWD shall enter the adjusted figure for medical accompaniment hours claimed in the third column of Part II, Section A, of the appropriate worksheet.
- (e) The CWD shall enter total medical accompaniment hours, after adjustment if applicable, for each month claimed, in the fourth column of Part II, Section A, of the appropriate worksheet.

.543 For each claim in which IHSS eligibility during the applicable retroactive payment and/or underpayment periods has been established by the findings in the case record, the CWD shall use Part II, Section B, of the appropriate worksheet to calculate and document the payments due for each month as follows:

- (a) A determination of whether the claimant is "class eligible," as provided on Part I, step #2, shall be entered for each eligible month in Column 2.
- (b) The number of hours claimed as entered in the first and fourth columns of Part II, Section A, shall be entered in the appropriate space in Column 3.
- (c) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.
- (d) The amount of payment the IHSS recipient was originally authorized during the applicable retroactive payment and/or underpayment period shall be entered by the CWD, from the case record, in Column 5.
- (e) The applicable statutory maximum as specified in Section 50-061.58 shall be entered by CMIPS in Column 6.

(1) If the case record indicates that the IHSS recipient was severely impaired, CMIPS shall calculate payments using the applicable severely impaired maximums. If the case record indicates that the IHSS recipient was nonseverely impaired, CMIPS shall calculate payments using the applicable nonseverely impaired maximums. The CWD shall enter the appropriate impairment level in Column 7.

(f) The applicable statutory maximum, as specified in Section 50-061.58 minus the amount originally authorized, as entered in Column 5, shall be calculated by CMIPS in Column 8.

(g) Total retroactive payments and/or underpayments due shall be calculated by CMIPS in Column 9.

(1) For those claims in which it has been established from the case record that the person who is claimed to have received protective supervision services was an IHSS recipient, the total retroactive payments and/or underpayments due shall be the lesser of the following:

(A) The difference between the applicable statutory maximum, as specified in Section 50-061.58 and the amount originally authorized, as entered in Column 5, or

(B) The amount claimed, as entered in Column 4.

(2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest.

(A) CMIPS shall calculate the amount of prejudgment interest due based on the amount of retroactive payments present in Column 9.

(3) Underpayments due shall not be subject to prejudgment interest.

.544 After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.

.55 Calculating the Actual Retroactive Payments and/or Underpayments -Denied and No Record Cases

.551 Parts II, III, and IV of the Standard Claim Form, and the case record and the Supplemental Claim Form, if used, shall be utilized to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determination Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments and underpayments if the claimant is found eligible.

.552 Part II, Section A, of the appropriate worksheet shall be utilized to record hours of protective supervision and/or medical accompaniment hours claimed, adjusted medical accompaniment hours as determined by the CWD, and total adjusted hours claimed, as described in Section 50-061.542(a) through (e).

.553 For each claim in which the CWD has either located a record of IHSS denial or the CWD has been unable to locate a case record and eligibility for IHSS has been established by the responses on the Supplemental Claim Form, the CWD shall use Part II, Section B, of the appropriate worksheet to calculate and document the payments due for each month as follows:

(a) A determination of whether the claimant is "class eligible," as indicated on Part I, step #2, shall be entered for each eligible month in Column 2.

(b) The number of hours claimed as entered in the first and fourth columns of Part II, Section A, shall be entered in the appropriate space in Column 3.

(c) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.

(d) The applicable nonseverely impaired statutory maximum, as specified in Section 50-061.58 shall be calculated by CMIPS in Column 6.

(1) The CWD shall use the applicable nonseverely impaired statutory maximum to calculate payments for all eligible cases in which: the CWD has no record of denial or the case record could not be located; eligibility has been established through the Supplemental Claim Form; and available evidence does not clearly show recipient need at the severely-impaired level. The CWD shall enter the appropriate impairment level in Column 7.

(e) The total retroactive payment and/or underpayments due, which shall be the amount claimed, as specified in Section 50-061.543(c) and entered in Column 4, provided the amount claimed for any month does not exceed the applicable nonseverely impaired statutory maximum during the month claimed, shall be calculated by CMIPS in Column 9.

(1) The total payments due shall be limited to the applicable nonseverely impaired statutory maximum amount during the month claimed.

(2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest.

(3) Underpayments due shall not be subject to prejudgment interest.

.554 After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.

.56 The CWD shall use the WRO v. McMahon Underpayment Eligibility Determination Worksheet to document all determinations for underpayment claims which were determined eligible for retroactive payments. Information from the Standard Claim Form, Retroactive Payment Eligibility Determination Worksheet, and Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.

.561 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, at the top of Part I.

.562 The CWD shall determine the claimant's eligibility for retroactive payments by reviewing the Retroactive Payment Eligibility Determination Worksheet, and shall document these findings on Part I, step #1 and #2, of the worksheet.

(a) If the claimant is not eligible for retroactive payments under WRO, the CWD shall deny the claim for underpayments.

(b) If the claimant is eligible for retroactive payments under WRO, the CWD shall determine if the claimant is eligible for retroactive payments through the end of the retroactive period, September 30, 1984.

(1) If the claimant is not eligible for retroactive payments through the end of the retroactive period, September 30, 1984, the CWD shall deny the claim for underpayments.

(2) If the claimant is eligible for retroactive payments through the end of the retroactive payment period of September 30, 1984, the CWD shall proceed to step #3 of the worksheet.

.563 The CWD shall determine if there is an IHSS case record for the claim.

(a) If there is no case record, CMIPS shall calculate underpayments using nonseverely impaired maximums.

(b) If there is a case record, CMIPS shall calculate underpayments at the appropriate maximums, subtracting payment amounts for previously authorized IHSS services.

.57 Calculating the Actual Underpayments - Claims With and Without IHSS Case Records

.571 The CWD shall use Section 50-061.54 for the calculation of underpayments for claims with an IHSS case record, and are otherwise eligible to receive underpayments.

.572 The CWD shall use Section 50-061.55 to calculate underpayments for claims with no IHSS case record, and are otherwise eligible to receive underpayments.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015; and Sections 12300, 12303.5, 12304, 12304.5, Welfare and Institutions Code.

Adopt Section 50-061.58 to read:

.58 IHSS Statutory Maximum During Retroactive Payment and Underpayment shall be:

<u>Effective Date</u>	<u>NSI</u>	<u>SI</u>
<u>7/1/83 --- 6/30/84</u>	<u>\$604</u>	<u>\$872</u>
<u>7/1/84 --- 6/30/85</u>	<u>\$638</u>	<u>\$921</u>
<u>7/1/85 --- 8/31/86</u>	<u>\$674</u>	<u>\$974</u>

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015; and Sections 12300, 12303.5, 12304, Welfare and Institutions Code.

Adopt Section 50-061.61 to read:

.6 General Provisions

.61 Share of Cost

.611 The CWD shall not consider any recipient share of cost when computing the amount of retroactive payments and/or underpayments due.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.62 to read:

.62 Prejudgment Interest

.621 Prejudgment interest for retroactive payments only shall be calculated at the following rate:

(a) Ten percent for the period July 1, 1983 through September 30, 1985.

.622 The interest shall be computed on the amount of the monthly payment up through the last day of the month following the month in which payment is authorized.

Authority Cited: Sections 10553 and 10554, Welfare and Insitutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.



Adopt Section 50-061.63 to read:

.63 Notices of Action

- .631 For each claim received for retroactive payments and underpayments, the CWD shall issue a final Notice of Action. The Notice of Action shall contain the following information:
- (a) The month(s) determined eligible and/or ineligible for retroactive payments and/or underpayments. The reason(s) for any months determined ineligible shall be clearly stated;
  - (b) The amount of retroactive payments due for each month, which shall be shown with and without interest;
  - (c) The amount of retroactive payments and interest due for each year, if payments are claimed for more than one year;
  - (d) The total retroactive payments due and the total amount of interest due;
  - (e) The combined amount of retroactive payments and interest due;
  - (f) The amount of underpayments due for each month, for each year if payments are claimed for more than one year, and the total underpayments due;
  - (g) A statement regarding withholding taxes;
  - (h) A statement regarding the claimant's right to a State Hearing on WRO v. McMahon determinations made by the CWD and information on how to request such hearings;
  - (i) The final Notice of Action approving or denying WRO claims for medical accompaniment shall specify the exact amount of and reason for adjusted hours, if any, for the service of medical accompaniment.
- .632 Each Notice of Action issued due to the claimant's failure to complete either the Standard Claim Form or Supplemental Claim Form in its entirety shall specify those sections of the form in need of completion.
- .633 Each Notice of Action as a result of the CWD having contradictory information shall include a copy of the information and shall advise the claimant that he/she has 45 days from the date of the Notice of Action to provide additional information, if available, or the claim shall be denied.

(a) If the claimant does not respond within the 45 days and provide information to rebut the CWD's contradictory information, the CWD shall issue a Final Notice of Action denying the claim for the months of ineligibility.

.634 For each claim denied, the Notice of Action shall clearly state the reason(s) for each period claimed and denied.

.635 For each approved claim in which the claimant is currently an IHSS recipient, the Notice of Action shall advise the claimant that the payment received as a result of his/her WRO v. McMahon claim may adversely affect his/her IHSS, SSI eligibility or other aid program eligibility and tax liability.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.64 to read:

.64 State Hearings

.641 The right to a state hearing on any WRO v. McMahon claim shall be granted only to WRO v. McMahon claimants or their authorized representatives.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Section 50-061.65 to read:

.65 Treatment of Lump Sum Payments in the IHSS Program

.651 It shall be the responsibility of the CWD to determine if the lump sum WRO v. McMahon retroactive payments and underpayments affect or does not affect the continued eligibility of all WRO v. McMahon claimants who are currently IHSS recipients.

.652 WRO v. McMahon payments shall be disregarded for IHSS financial eligibility determinations for the month of receipt and the following month. Any remaining balance from the WRO v. McMahon payments shall be counted as a resource in the second month following the month of receipt.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

Adopt Sections 50-061.7 and .8 to read:

.7 Monitoring CWD Compliance

.71 County Statistical Reports

.711 Beginning February 1, 1993 and continuing until an eligibility determination has been made on each claim received, the SDSS shall compile a monthly report on retroactive payment claims and a separate monthly report on underpayment claims. The reports shall contain the following information:

- (a) The number of claims received;
- (b) The number of claims denied;
- (c) The number of claims approved;
- (d) The number of claims pending; and,
- (e) The amount of payments approved.

.72 Final Report

.721 SDSS shall obtain from the CMIPS a final report, by county, that includes the following:

- (a) The number of claimants paid;
- (b) The total amount of retroactive payments;
- (c) The number of underpayments paid; and,
- (d) The total amount of underpayments paid.

.73 Case Reviews

.731 Based on the quarterly reports, SDSS shall determine the fifteen (15) counties having the largest number of claims over the eight-month period.

.74 County Cooperation

.741 Each CWD shall cooperate with SDSS in providing information deemed necessary to monitor county compliance with the provisions of these regulations and the WRO v. McMahon final judgment.

.8 Appendix - WRO Forms

.81 The following forms are to be used to process WRO claims:

- (1) Poster - 2041 (Eng/Sp) (11/92)
- (2) Explanatory Flyer - 2040 (Eng/Sp) (11/92)
- (3) Standard Claim Form - 2007 (Eng/Sp) (11/92)
- (4) Supplemental Claim Form - 2006 (Eng/Sp) (11/92)
- (5) Underpayment Worksheet - 2008 (11/92)
- (6) Retroactive Worksheet - 2009 (11/92)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Amended judgment regarding WRO v. McMahon dated July 19, 1991, Case No. 531015.

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

AGENCY

State Department of Social Services

AGENCY FILE NUMBER (If any)

1192-40

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

PREVIOUS REGULATORY ACTION NUMBER

93-0125-01E

In the office of the Secretary of State  
of the State of California

FILED

FEB 02 1993

At 4:44 O'clock P M.

MARION FONG EU, Secretary of State

By Kathleen J. Moreland  
Deputy Secretary of State

For use by Office of Administrative Law (OAL) only

1993 JAN 25 PM 1:24

OFFICE OF  
ADMINISTRATIVE LAW  
ENDORSED  
APPROVED FOR FILING

FEB 02 1993

Office of Administrative Law

NOTICE

REGULATIONS

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE GAIN-Concurrent Enrollment		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S) MPP	ADOPT 42-720.39; 42-730.6; 42-761.364; 42-772.58; 42-773.13, 42-774.32; and 42-786.25.
SECTIONS AFFECTED	AMEND 42-720.324(b); 42-772.31, .52 and .54; 42-774.121 and .3; and 42-781.72 REPEAL

## 2. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code, § 11346)
 ☐ Resubmittal
 ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 ☒ Emergency (Gov. Code, § 11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only
 ☐ Other (specify)

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

Not Applicable

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☐ Effective 30th day after filing with Secretary of State
 ☐ Effective on filing with Secretary of State
 ☒ Effective other (Specify) FEB 2 1993 per 2/2/93 memo

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399)
 ☐ Fair Political Practices Commission
 ☐ State Fire Marshal

☐ Other (Specify)

## 6. CONTACT PERSON

Jim Rhoads, Assistant Bureau Chief, Regulations Development Bureau

TELEPHONE NUMBER

(916) 657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

TYPED NAME AND TITLE OF SIGNATORY

Eloise Anderson, Director

DATE

JAN 22 1993



**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 2-91) ( REVERSE)

**INSTRUCTIONS FOR PUBLICATION OF NOTICE  
AND SUBMISSION OF REGULATIONS**

The revised form STD. 400 replaces form STD. 398 (REV. 3/85) (Face Sheet for Filing Notice of Proposed Regulatory Action in the California Administrative Notice Register) and form STD. 400 (REV. 8/85) (Face Sheet for Filing Administrative Regulations with the Office of Administrative Law). Use the new form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

**ALL FILINGS**

Enter the agency name and agency file number, if any.

**NOTICES**

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations, the statement of reasons and a list of small businesses to whom the notice will be mailed, if any. If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified" and place a number in the box marked "Notice File Number." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

**REGULATIONS**

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Government Code § 11347.3 for rulemaking file contents.)

**RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS**

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the number of the previously disapproved or withdrawn filing in the box marked

"Previous Regulatory Action Number" at the top of the form and submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Government Code §§ 11349.4 and 11347.3 for more specific requirements.)

**EMERGENCY REGULATIONS**

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Government Code § 11346.1 for other requirements.)

**NOTICE FOLLOWING EMERGENCY ACTION**

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A only. Please insert the OAL number for the original emergency filing in the box marked "Emergency Number" at the top of the form. OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

**CERTIFICATE OF COMPLIANCE**

When filing the certificate of compliance for emergency regulations, fill out Part B on the form that was previously submitted with the notice, or, if a new STD. 400 is used, please include the previously assigned numbers in the boxes marked "Notice File Number" and "Emergency Number." The materials indicated in these instructions for "REGULATIONS" must also be submitted.

**EMERGENCY REGULATIONS - READOPTION**

When submitting previously approved emergency regulations for reoption, use a new STD. 400 and fill out Part B, including the signed certification, and enter the OAL number of the original emergency filing in the box marked "Emergency Number" at the top of the form.

If you have any questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law at (916) 323-6225 or ATSS 473-6225.



Amend Section 42-720.324(b) and adopt Section 42-720.39 to read:

42-720 THE GAIN COUNTY PLAN (Continued)

42-720

.3 County Plan Content (Continued)

.32 (Continued)

.324 (Continued)

(a) (Continued)

(b) The CWD shall make available all of its programs to each target group, but may give priorities for certain programs to individuals for whom these programs are reasonably expected to be the most effective. ~~(Refer to)~~ See Section 42-730.67.)/ (Continued)

.39 The county plan for a county which offers concurrent enrollment as defined in Section 42-730.6 shall contain a description of the concurrent enrollment program which includes, but is not limited to, the activities which may be combined and choice of program flow option(s) pursuant to Section 42-772.582.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 11320.6(b), 11320.8(c), 11321, 11321.2, 11321.2(a), 11322.2(b), 11322.4, 11323.15, 11330.5(d), 11330.8(c), 11330.9, and 13280, Welfare and Institutions Code/; AB 312, Chapter 1568, Statutes of 1990; 45 CFR 250.1/; 45 CFR 250.12(c)/; and 45 CFR 250.31(a).

Renumber Sections 42-730.6 through .621 to Sections 42-730.7 through .721, respectively and adopt Section 42-730.6 to read:

42-730 GAIN JOB, TRAINING AND EDUCATION SERVICES (Continued)

42-730

.6 Concurrent Enrollment

.61 Pursuant to its approved GAIN County Plan, the CWD may offer concurrent enrollment in basic education (as defined in Section 42-772.5) and in training and/or education services as defined in Sections 42-730.3, .52 and .53 which may be determined at assessment (see Section 42-773) to be necessary. The CWD may offer concurrent enrollment to any registrant determined during appraisal (see Section 42-761) to lack basic literacy and mathematics skills, a high school diploma or its equivalent, or English language skills. The participant may choose to participate in concurrent enrollment in accordance with the provisions of Section 42-772.58.

.62 Concurrent education and training activities may either be separate components provided by one or more providers or combined into an integrated component provided by the same provider.

.67 (Continued)

.671 (Continued)

.672 (Continued)

.6721 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 11322.6(f), 11322.6(f)(2), 11322.8(h)(6), 11323, 11323.15, and 11330.7, Welfare and Institutions Code/; AB 312, Chapter 1568, Statutes of 1990/; 45 CFR 250.60(c)/ and (d)/; and 45 CFR 250.62(b)(2).

Adopt Section 42-761.364 to read:

42-761 GAIN REGISTRANT APPRAISAL (Continued)

42-761

.3 (Continued)

.36 (Continued)

.364 If the county offers concurrent enrollment as defined in Section 42-730.6, a registrant determined to need basic skills instruction, English language skills instruction, or a high school diploma or equivalent shall be informed during the appraisal of the right to choose concurrent enrollment in basic education (as defined in Section 42-772.5) and training and/or education services as defined in Sections 42-730.3, .52 and .53.

(a) A participant who chooses concurrent enrollment shall be informed of all participation requirements prior to signing a participant contract.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 11323.15, 11323.2(a), 11323.4(d)(1), 11323.6(d)(1), 11325, 11325.2(c)(7) and 11330.3, Welfare and Institutions Code/; AB 312, Chapter 1568, Statutes of 1990; 45 CFR 250.1/; 45 CFR 250.41(a)(1)(i) and (b)/; 45 CFR 250.48(a) and 45 CFR 255.2(a); and 54 FR 42184, October 13, 1989.

Amend Sections 42-772.31, .52 and .54 and adopt Section 42.772.58 to read:

42-772 GAIN BASIC CONTRACT REQUIREMENTS (Continued)

42-772

.3 (Continued)

.31 Referral to an assessment shall be delayed for individuals who meet the conditions in Sections 42-772.4 or .5 ~~below~~, except as specified in Sections 42-772.45, .52, and .53 ~~below~~ and .58.

.4 (Continued)

.5 (Continued)

.52 An individual may choose to concurrently participate, ~~concurrently~~ prior to assessment, according to in accordance with Sections 42-772.11, .22, or .31 ~~below~~, whichever is appropriate.

.53 (Continued)

.54 For participants who participate first or concurrently according to Sections 42-772.1 or .2 ~~below~~, a referral to an assessment (Section 42-773) shall not be made until the education program has been completed, except as provided in Section 42-772.58. (Continued)

.58 In accordance with the provisions of Section 42-730.6, a participant may be concurrently enrolled in basic education (as defined in Section 42-772.5) and training and/or education services (as defined in Sections 42-730.3, .52 and .53). A participant who requests such concurrent enrollment is not precluded from participation in accordance with Sections 42-772.52 and .53.

.581 A participant may be concurrently enrolled in basic education (as defined in Section 42-772.5) and training and/or education services defined in Sections 42-730.3, .52 and .53 if:

(a) The county offers concurrent enrollment as a program activity as defined in Section 42-730.6 and as specified in its approved county plan (see Section 42-720.39); and

(b) The individual requested such concurrent enrollment as specified in Section 42-761.364. Assignment to concurrent enrollment shall be made only when agreed to by the participant.

.582 Counties may choose to offer one or both of the following concurrent enrollment program flow options:

(a) Following appraisal and enrollment in the needed basic education activity, the participant may be assigned to assessment and enrolled in training and/or education activities (as defined in Sections 42-730.3, .52, and .53) which are consistent with the employment plan (see Sections 42-773 and 42-774).

(b) Following appraisal, a participant may be assigned to assessment, followed by enrollment in the needed basic education activity and in training and/or education activities (as defined in Sections 42-730.3, .52, and .53) which are consistent with the employment plan (see Sections 42-773 and 42-774).

.583 The two-academic-year limitation for completion of a post-assessment education program (see Section 42-730.54) shall not apply to basic education activities undertaken by a participant in a concurrent enrollment program pursuant to Section 42-730.6.

.584 For purposes of cause determination, conciliation and sanction, basic education is the primary component. Counties shall ensure continued participation in basic education in the event participants fail or refuse to comply with program requirements without good cause. See Sections 42-781.72 and 42-786.25.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 11310(b)(6)(B), (d) and (e), 11323.15, 11325.2(c)(5), (6) and (7), 11326.2(b), (c)(5)(D) and (E), 11330, 11330.1, 11330.2, 11330.4, 11330.5, 11330.6, 11330.8 and 11330.10, Welfare and Institutions Code/; AB 312, Chapter 1568, Statutes of 1990; and 45 CFR 250.1/; 45 CFR 250.32(a)(1) and (3)(ii)/; 45 CFR 250.48 and .48(b)/; and 45 CFR 255.2(a) and (c).

Adopt Section 42-773.13 to read:

42-773 DEVELOPMENT OF AN EMPLOYMENT PLAN

42-773

.1 (Continued)

.13 Persons identified in Section 42-772.58.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 11323.15, Welfare and Institutions Code.

Amend Sections 42-774.121 and .3, and adopt Section 42-774.32 to read:

42-774 PARTICIPANT CONTRACT AMENDMENTS (Continued)

42-774

.1 (Continued)

.12 (Continued)

.121 The job services and training and education services may consist of one or more of the program components described in Sections 42-730.2, .3, ~~and~~ .5, and .6. (Continued)

.2 (Continued)

.3 Except as provided in Section 42-774.32, Whenever a participant does not have good cause for failing to meet the criteria specified in Section 42-774.131 ~~above~~ for successful completion of the assigned training or educational services agreed to in Sections 42-774.1 or .2 ~~above~~, he/she shall be reassigned to a basic long-term PREP assignment as described in Section 42-730.32. The contract shall be amended to reflect the assignment to basic long-term PREP/ and the provision of supportive services.

.31 (Continued)

.32 Section 42-774.3 shall not apply to a participant in a concurrent enrollment program pursuant to Sections 42-730.6 and 42-772.58. Failure or refusal by such a participant to comply with program requirements in accordance with criteria specified in Section 42-774.131 shall be governed by the provisions of Sections 42-772.584, 42-781.72, and 42-786.25.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 11323.15, and 11325.8(a), Welfare and Institutions Code / and 45 CFR 250.60(d).

Amend Section 42-781.72 to read:

42-781 CAUSE DETERMINATIONS AND CONCILIATION (Continued)

42-781

.7 (Continued)

.72 ~~Repealed by Manual Letter No. EAS-90-03, effective 10/1/90.~~ The conciliation plan for an individual in a concurrent enrollment program (as defined in Section 42-730.6) shall, at a minimum, include continued participation in the needed basic education activity. (See Sections 42-772.584, 42-774.32, and 42-786.25.)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 11323.15, 11327.4, 11327.4(b), 11327.4(e), 11327.4(d), 11327.4(i), 11327.5(c)(1), and 11330.10(c), Welfare and Institutions Code; AB 312, Chapter 1568, Statutes of 1990; 45 CFR 250.34(a); and FSA-JOBS-90-3 (Federal Action Transmittal).



Renumber Sections 42-786.25 and .251 to Sections 42.786.26 and .261 respectively, and adopt Section 42-786.25 to read:

42-786 GAIN SANCTIONS (Continued)

42-786

.2 (Continued)

.25 To cure a sanction for noncompliance with program requirements of a concurrent enrollment program (as defined in Section 42-730.6), the individual must, at a minimum, agree to participate in the needed basic education activity. (See Sections 42-772.584 and 42-781.72.)

~~.256~~ (Continued)

~~.2561~~ (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 11323.15, 11327.4(j), 11327.5(b), (c)(1)(A) and (B), (2) and (3) and (d), Welfare and Institutions Code/i AB 312, Chapter 1568, Statutes of 1990; 45 CFR 250.34(c)(2) and (3)/i 45 CFR 255.2(h)(2)/i and 54 FR 42173, October 13, 1989.

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 2-91)

AGENCY

For use by Secretary of State only

STATE DEPARTMENT OF SOCIAL SERVICES

AGENCY FILE NUMBER (if any)

0791-35

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

PREVIOUS REGULATORY ACTION NUMBER

For use by Office of Administrative Law (OAL) only

1032 DEC 22 PM 3:46

OFFICE OF  
ADMINISTRATIVE LAWENDORSED  
APPROVED FOR FILING

FEB 05 1993

Office of Administrative Law  
REGULATIONS

FILED

In the office of the Secretary of State  
of the State of California

FEB 4 1993

At 3:28 O'clock P.M.

MARCH FONG EU, Secretary of State

By Kathleen J. Moerland  
Deputy Secretary of State

NOTICE

REGULATIONS

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE Resident Relocation Review		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON				TELEPHONE NUMBER	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 92-1-2		PUBLICATION DATE 1-3-92	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

## 1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S) 22	ADOPT 87701.5
SECTIONS AFFECTED	AMEND 87101, 87342.1, 87451, 87455, 87568, 87569, 87582, 87583, 87587, 87591, 87701.1 and 87720
	REPEAL

## 2. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code, § 11346) ☐ Resubmittal ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) ☐ Emergency (Gov. Code, § 11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

☐ Print Only ☐ Other (specify)

## 3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

November 14, 1992 to November 30, 1992

## 4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

☒ Effective 30th day after filing with Secretary of State ☐ Effective on filing with Secretary of State ☐ Effective other (Specify)

## 5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) ☐ Fair Political Practices Commission ☐ State Fire Marshal  
☐ Other (Specify)

## 6. CONTACT PERSON

Jim Rhoads, Asst. Chief, Regulations Development Bureau

TELEPHONE NUMBER

657-2586

7.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eloise Anderson

TYPED NAME AND TITLE OF SIGNATORY

ELOISE ANDERSON, DIRECTOR

DATE

12/21/92

Amend Section 87101 to read:

87101        DEFINITIONS

87101

a.- g.        (Continued)

h.    (1)    (Continued)

(2)    Health Condition Relocation Order. "Health Condition Relocation Order" means written notice by the Department to a licensee requiring the relocation of a resident from a residential care facility for the elderly because the resident has a health condition which cannot be cared for within the limits of the license, requires inpatient care in a health facility or has a prohibited health condition as specified in Section 87701.

(23)   (Continued)

i.    (3)    Interdisciplinary Team. "Interdisciplinary Team" means a team that shall assist the Department in evaluating the need for relocating a resident of a residential care facility for the elderly when the resident has requested a review of the Department's health-condition relocation order. This team shall consist of the Department's nurse consultant and a social worker, designated by the Department, with experience in the needs of the elderly. Persons selected for an interdisciplinary team review shall not have been involved in the initial decision to issue a relocation order for the resident in question.

j. - o.        (Continued)

p.    (2)    Placement Agency. "Placement Agency" as defined in Health and Safety Code Section 1569.47(a), means any county welfare department, county social services department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, state-funded program or private agency providing placement or referral services, and regional center for persons with developmental disabilities which is engaged in finding homes or other places for the placement of elderly persons for temporary or permanent care.

(23)   (Continued)

(74)   (Continued)

q.    (Continued)

r. (3) Responsible Person. "Responsible Person" means that individual or individuals, including a guardian/conservator/ or relative, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being. This includes the County Welfare Department/ Adult Protective Services Unit/ when no other responsible person can be found/ (Continued)

Authority Cited: Sections 1569.30 and 1569.30(a), Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.5, 1569.10, 1569.145, 1569.15, 1569.157, 1569.17, 1569.19, 1569.191(e), 1569.193(a) and (c), 1569.20, 1569.21, 1569.30, 1569.312, 1569.44, 1569.47, 1569.54 and 1569.82, Health and Safety Code.



Adopt a heading for new Section 87342.1; relocate and renumber Section 87582(j) to Section 87342.1(a) to read:

87342.1 RELOCATION OF RESIDENT - GENERAL

87342.1

(a) ~~In all cases~~ When a resident must be relocated by Department order whether individual health-condition relocations pursuant to Section 87701.1 or temporary suspension orders pursuant to Section 87342(c), the licensee shall not obstruct the relocation process and shall cooperate with the Department in the relocation process. Such cooperation shall include, but not be limited to, the following activities:

- (1) Identifying and preparing for removal of the medications, Medi-Cal or Medicare or other medical insurance documents, clothing, safeguarded cash resources, valuables and other belongings of the resident.
- (2) Contacting the person responsible for the resident to assist in transporting him or her, if necessary.
- (3) Contacting other suitable facilities for placement, if necessary.
- (4) Providing access to resident's files when required by the Department.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569, 1569.1, 1569.2, 1569.30, 1569.31, 1569.312 and 1569.54, Health and Safety Code.

Amend Section 87451 to read:

87451        SERIOUS DEFICIENCIES - EXAMPLES

87451

(a) (Continued)

(1) - (16) (Continued)

(17) Section 87701.5 relating to licensees forwarding to the Department a resident's request for review by an interdisciplinary team of a health condition relocation order.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.30, 1569.31, 1569.312, 1569.315, 1569.335, 1569.485, ~~and~~ 1569.49, and 1569.54, Health and Safety Code.

Amend Section 87455 to read:

87455 ADMINISTRATIVE REVIEW - GENERAL

87455

- (a) A licensee or his/her representative may request in writing a review of a notice of deficiency, ~~and/or~~ notice of penalty and/or health condition relocation order within 10 working days/ of receipt of the notice or order. This review shall be conducted by a higher level staff person other than the evaluator who issued the notice of deficiency, ~~and/or~~ notice of penalty, and/or health condition relocation order.

(1) Additional review requirements pertaining to Incidental Medical Services are specified in Section 87720.

(b) (Continued)

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.30, 1569.33, 1569.335, 1569.35, 1569.485, ~~and~~ 1569.49, and 1569.54, Health and Safety Code.

Amend Section 87568 to read:

87568      ADMISSION AGREEMENTS

87568

(a) (Continued)

(b) (Continued)

(1) - (4) (Continued)

(5) Refund Conditions.

(A) When the Department orders relocation of a resident under the provisions of Section 87701.1(a), the resident shall not be held responsible for meeting any advance notice requirement imposed by the licensee in the admission agreement. The licensee shall refund any money to which the resident would have been entitled had notice been given as required by the admission agreement.

(6) - (10) (Continued)

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.30, 1569.31, 1569.312, 1569.313, 1569.54 and 1770 et seq., Health and Safety Code.



Amend Section 87569 to read:

87569 MEDICAL ASSESSMENT

87569

- (a) Prior to a person's acceptance as a resident, the licensee shall obtain and keep on file, ~~evidence~~ documentation of a ~~physical examination~~ medical assessment, signed by a physician, made within the last year. Which shall include but not be limited to: The licensee shall be permitted to use the form LIC 602 (Rev. 9/89), Physician's Report, to obtain the medical assessment.
- (b) The medical assessment shall include, but not be limited to:
- (1) A physical examination of the resident indicating the physician's primary diagnosis and secondary diagnosis, if any ~~Establishing where there are findings of~~ and results of an examination for communicable tuberculosis, other contagious/infectious diseases or other medical conditions which would preclude care of the person by the facility.
  - (2) ~~Recording~~ Documentation of prior medical services and history and current medical status including, but not limited to height, weight and blood pressure.
  - (3) ~~Providing~~ a record of current prescribed medications, and an indication of whether the medication should be centrally stored, pursuant to Section 87575(c)(1).
  - (4) ~~Identifying~~ Identification of physical limitations of the person to determine his/her capability to participate in the programs provided by the licensee, including any medically necessary dietary limitations.
  - (5) ~~Making~~ a determination of the person's ~~ability to ambulate without assistance~~ ambulatory status as defined by Section 87101a.(3)/, and bedridden status, as defined in Section 87582(d).
  - (6) ~~Providing~~ Information applicable to the pre-admission appraisal specified in Section 87583.
- (c) The licensee shall obtain an updated medical assessment when required by the Department.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.30, 1569.31, 1569.312, and 1569.315, and 1569.54, Health and Safety Code.

Amend Section 87582 and relocate and renumber Section 87582(i) to 87701.1 and Section 87582(j) to 87342.1 to read:

87582            ACCEPTANCE AND RETENTION LIMITATIONS

87582

(a) Acceptance or retention of residents by a facility shall be in accordance with the criteria specified in this article/ and in the Incidental Medical Services, Section 87700, and the following.

(1) - (5)    (Continued)

(b) (6)    Persons who are under ~~§2~~ 60 years of age whose needs are compatible with other residents in care, if they require the same amount of care and supervision as do the other residents in the facility.

(c)    (Continued)

(1)    (Continued)

(2)    (Continued)

(d)    (Continued)

(e) through (h)    (Continued)

~~11~~

~~11~~

Authority Cited:    Section 1569.30, Health and Safety Code.

Reference:            Sections 1250, 1569.1, 1569.2, 1569.30, 1569.31, 1569.312, and 1569.54 and 1569.72, Health and Safety Code.

Amend Section 87583 to read:

87583 PRE-ADMISSION APPRAISAL - GENERAL

87583

- (a) Prior to admission, the applicant prospective resident and his/her responsible person, if applicable any, shall be interviewed by the person licensee or the employee responsible for facility admissions.
- (1) Sufficient information about the facility and its services shall be provided to enable all persons involved in the placement to consider the plan fully make an informed decision regarding admission.
- (2) The applicant's prospective resident's desires regarding entrance admission, and his/her background, including any specific service needs, medical background and functional limitations shall be discussed.
- (b) No person shall be admitted without his/her consent and agreement, or that of his/her responsible person, if applicable any.
- (c) Prior to admission, a determination of an applicant's the prospective resident's suitability for admission shall be completed and shall include an appraisal of his/her individual service needs in comparison with the admission criteria specified in Section 87582.
- (1) The appraisal shall include, at a minimum, an evaluation of the person's prospective resident's functional capabilities, and mental condition/ and an evaluation of certain social factors as specified in Sections 87584 through 87586 below.
- (A) The licensee shall be permitted to use the form LIC 603 (Rev. 6/87), Preplacement Appraisal Information, to document the appraisal.
- (2) If the Except as provided in Section 87701.5(g)(3), if an initial appraisal or any subsequent reappraisal identifies an individual resident service need which is not being met by the general program of facility services, advice shall then be obtained from a physician, social worker, or other appropriate consultant to determine if the needs can be met by the facility. If so, the licensee and the consultant shall develop a plan of action which shall include:
- (A) - (D) (Continued)
- (3) The applicant prospective resident, or his/her responsible person, if applicable any, and any relative(s) participating in the placement shall be involved in the development of the appraisal.
- (A) The licensee shall be permitted to use the form LIC 9027 (Rev. 1/89), Resident's Health Status - Summary, to summarize all findings of the appraisal, but the LIC 9027 shall not be used as a substitute for the detailed information required by this section and Section 87569. (Continued)

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.30, 1569.31 and 1569.312, Health and Safety Code.

Amend Section 87587 to read:

87587 REAPPRAISALS

87587

(a) (Continued)

(1) - (2) (Continued)

(3) Any illness, injury or trauma which results in a condition specified in Section 87701. (Continued)

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.30, 1569.31, 1569.312 and 1569.315, Health and Safety Code.

Amend Section 87591 to read:

87591           OBSERVATION OF THE RESIDENT

87591

The licensee shall regularly observe each resident for changes in physical, mental, emotional and social functioning. ~~Documentation of observation is not required/ however/~~ The licensee shall provide appropriate assistance when such observation reveals unmet needs which might require a change in the existing level of service, or possible discharge or transfer to another type of facility. When changes such as unusual weight gains or losses or deterioration of health condition are observed, the licensee shall document such changes and bring such changes to the attention of the resident's physician ~~and/or other appropriate parties~~ and the resident's responsible person, if any.

Authority Cited:   Section 1569.30, Health and Safety Code.

Reference:           Sections 1569.1, 1569.2, 1569.30, 1569.31 and 1569.312, Health and Safety Code.

Adopt Section 87701.1 and renumber Sections 87582(i)(1) through (6) to Sections 87701.1(a)(2) through (7) to read:

87701.1 HEALTH CONDITION RELOCATION ORDER

87701.1

(a) If a resident has a health condition which cannot be cared for within the limits of the license, requires inpatient care in a health facility or has a health condition prohibited by this section, the Department shall order the licensee to relocate the resident.

(1) The Department shall give written notice to the licensee ordering the relocation of the resident and informing the licensee of the resident's right to an interdisciplinary team review of the relocation order as specified in Section 87701.5. Notice of the health condition relocation order and information about the right to request an interdisciplinary team review of the relocation order shall be given to the resident, by the Department, and sent to the resident's responsible person, if any.

(A) If the resident has no responsible person, as defined in Section 87101, the relocation order shall be sent to the representative payee, if any. In such cases, the Department shall also notify the State Long-Term Care Ombudsman of the relocation order by telephone.

(2) Except as provided in ~~Section 87582(e)(6)~~ Section 87701.1(a)(1)(A), the licensee shall prepare a written relocation plan in any instance where the Department does not suspend the facility license, and the Department requires that a resident be relocated because the resident has a health condition(s) which cannot be cared for within the limits of the license of the facility or which requires inpatient care in a licensed health facility the licensee shall prepare a written relocation plan. The plan shall contain all necessary steps to be taken to reduce stress to the resident which may result in transfer trauma/, and shall include but not be limited to:

(1) The written relocation plan shall include/ but not be limited to the following/

(A) A specific date for beginning and a specific date for completion of the process of safely relocating the resident. The time frame for relocation may provide for immediate relocation but shall not exceed 30 days.

(B) A specific date when the resident and the resident's responsible person, if any, shall be notified of the need for relocation.

(C) A specific date when consultation with the resident's physician shall occur to obtain a current medical assessment of the resident's health needs, to determine the appropriate facility type for relocation and to ensure that

the resident's health care needs continue to be met at all times during the relocation process.

- (D) The method by which the licensee shall participate in the identification of an acceptable relocation site with the resident and the responsible person, if any. The licensee shall advise the resident and/or the responsible person that if the resident is to be moved to another residential care facility for the elderly, a determination must be made that the resident's needs can be legally met in the new facility before the move is made. If the resident's needs cannot be legally met in the new facility, the resident must be moved to a facility licensed to provide the necessary care.
  - (E) A list of contacts made or to be made by the licensee with community resources, including but not limited to, social workers, family members, Long Term Care Ombudsman, clergy, Multipurpose Senior Services Programs and others as appropriate to ensure that services are provided to the resident before, during and after the move. The need for the move shall be discussed with the resident and the resident assured that support systems will remain in place.
  - (F) Measures to be taken until relocation to protect the resident and/or meet the resident's health and safety needs.
  - (G) An agreement to notify the Department when the relocation has occurred, including the resident's new address, if known.
- (23) The relocation plan shall be submitted in writing to the Department within the time set forth in the ~~will be~~ LIC 809 (Rev.5/88) Licensing Report by the Department that the resident requires health services that the facility cannot legally provide.
- (34) Any changes in the relocation plan shall be submitted in writing to the Department. The Department shall have the authority to approve, disapprove or modify the plan.
- (45) If relocation of more than one (1) resident is required, a separate plan shall be prepared and submitted in writing for each resident.
- (56) The licensee shall comply with all terms and conditions of the approved plan. No written or oral contract with any other person shall release the licensee from the responsibility specified in this section or Sections 87332.1 and 87342.1 for relocating a resident who has a health condition(s) which cannot be cared for in the facility and/or which requires inpatient care in a licensed health facility, nor from taking all necessary actions to reduce stress to the resident.



(Ø7) In cases where the Department determines that the resident is in imminent danger because of a health condition(s) which cannot be cared for in the facility or which requires inpatient care in a licensed health facility, the Department shall order the licensee to immediately relocate the resident.

(A) No written relocation plan is necessary in cases of immediate relocation.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1250, 1569.1, 1569.2, 1569.30, 1569.31, 1569.312 and 1569.54, Health and Safety Code.

Adopt Section 87701.5 to read:

87701.5 RESIDENT REQUEST FOR REVIEW OF HEALTH CONDITION  
RELOCATION ORDER

87701.5

- (a) A resident, or the resident's responsible person, if any, shall be permitted to request a review and determination of the Department's health condition relocation order by the interdisciplinary team.
  - (1) If the resident has no responsible person, as defined in Section 87101, the Long-Term Care Ombudsman and/or the resident's representative payee, if any, shall be permitted to submit a request for review and determination on behalf of the resident.
- (b) The resident, or the resident's responsible person, if any, shall have three (3) working days, from receipt of the relocation order, to submit to the licensee a written, signed and dated request for a review and determination by the interdisciplinary team.
  - (1) For purposes of this section, a working day is any day except Saturday, Sunday or an official state holiday.
- (c) The licensee shall mail or deliver such a request to the Department within two (2) working days of receipt.
  - (1) Failure or refusal to do so may be subject to civil penalties, as provided in Section 87454.
- (d) The Department shall give written notification to the resident, or the resident's responsible person, if any, acknowledging receipt of the resident's request for review of the relocation order. Notification shall occur within three (3) working days of receipt by the Department of the request for review.
- (e) Within ten (10) working days from the date of the resident's review request, the licensee shall submit to the Department the documentation specified in Section 87701.5(g) to complete the resident's review request.
- (f) The licensee shall cooperate with the resident, or the resident's responsible person, if any, in gathering the documentation to complete the resident's review request.
- (g) The documentation to complete the resident's review request shall include, but not be limited to, the following:
  - (1) The reason(s) for disagreeing that the resident has the health condition identified in the relocation order and why the resident believes he/she may legally continue to reside in a residential care facility for the elderly.

- (2) A current medical assessment signed by the resident's physician.
  - (A) For purposes of this section, this assessment shall include the information specified in Sections 87702.1(a)(1)(A) through (E).
  - (B) For purposes of this section, "current" shall mean a medical assessment completed on or after the date of the relocation order.
- (3) An appraisal or reappraisal of the resident as specified in Sections 87583(c)(1) and 87587.
  - (A) The licensee shall be permitted to use the form LIC 603 (Rev. 6/87), Preplacement Appraisal Information, to document the appraisal or reappraisal.
- (4) A written statement from a placement agency, if any, currently involved with the resident, addressing the relocation order.
- (h) The Department shall inform the resident and/or the resident's responsible person, if any, in writing, of the interdisciplinary team's determination and the reason for that determination not more than 30 days after the resident or his/her responsible person, if any, is notified of the need to relocate.
- (i) The resident's right to a review of a health condition relocation order issued by the Department shall not:
  - (1) Nullify a determination by the Department that the resident must be relocated in order to protect the resident's health and safety as specified in Section 87582(e)(6).
  - (2) Apply to eviction under Section 87589.
  - (3) Imply a right to a state hearing or any other administrative review beyond that set forth in this section.
  - (4) Apply if the facility license has been temporarily suspended as specified in Section 87342(c).

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.30 and 1569.54, Health and Safety Code.

Amend heading for Section 87720 and repeal and adopt Section 87720 to read:

87720      ADMINISTRATIVE REVIEW - INCIDENTAL MEDICAL RELATED  
SERVICES APPEALS

87720

- (a) The licensee may appeal if he/she disagrees with the health condition determination made by the licensing agency by submitting a written request to the licensing agency within 10 days of the receipt of the determination.

For purposes of this article, any request for administrative review of a notice of deficiency, notice of penalty, or health condition relocation order shall be submitted by the licensee or his/her designated representative in writing to the Department and, in addition to the requirements of Section 87455, shall include the following:

- (1) The reason(s) the licensee disagrees with the notice or order.
- (2) Information about the resident as specified in Section 87702.1(a).
- (3) A current appraisal or reappraisal of the resident as specified in Sections 87583(c)(1) and 87587.
- (4) A written statement from the resident's placement agency, if any, addressing the notice or order.

BY All appeals submitted by the licensee shall be in writing and shall include/ but not be limited to/ the following/

- 11 The reason for disagreeing with the determination by the licensing agency and why the licensee believes that the resident's condition falls within the allowable limits for an RCFE/
- 12 Letters of support from the resident's physician and/or responsible person/
- 13 Letter of support from the appropriate placement agency/ if any/

Authority Cited: Sections 1569.30 and 1569.30(a), Health and Safety Code.

Reference: Sections 1569.2(a), (e), and (j); 1569.30; 1569.30(b); and 1569.312; and 1569.54; Health and Safety Code.